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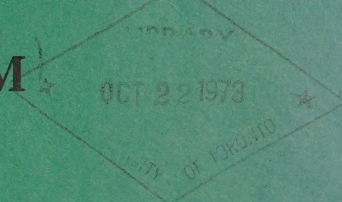


Ontario

1973

Legislative Assembly

Interim Report
of the
Select Committee
on
ECONOMIC AND CULTURAL
NATIONALISM



FOREIGN OWNERSHIP OF
ONTARIO REAL ESTATE

*interim
report*

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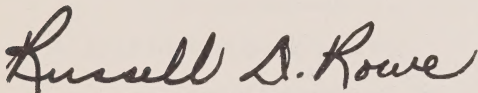
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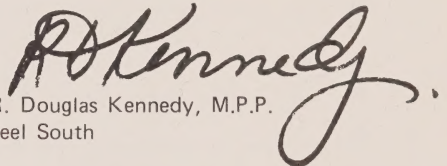
TO: The Honourable Allan E. Reuter,
Speaker of the Legislative Assembly of the Province of Ontario:

Sir:

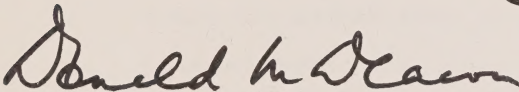
We, the undersigned members of the Committee appointed by the Legislative Assembly of the Province of Ontario on December 17, 1971, to review the Report of the Interdepartmental Task Force on Foreign Investment and the current status of opinion and information on economic and cultural nationalism in Canada, have the honour to submit the attached Interim Report.



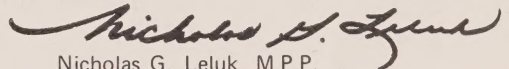
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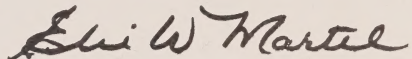
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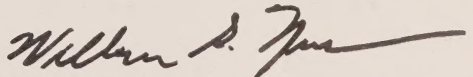
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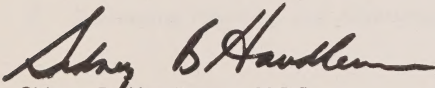
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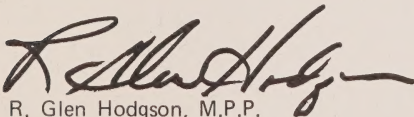
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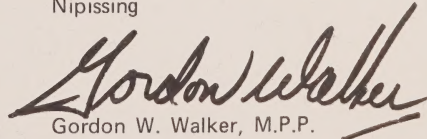
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**A. BACKGROUND CONSIDERATIONS AND
GENERAL CONCLUSION**

1. Introduction

1.1 In its Preliminary Report¹ the Committee identified foreign ownership of land as a matter needing immediate study. The Committee referred particularly to recreational land in Ontario, its role in the general quality of life in the province, its availability to Canadians, and the effect of foreign demand on its price.

1.2 The Committee has conducted additional enquiries into foreign or non-resident ownership of recreational land in Ontario. In addition, having regard to the great difficulty of distinguishing various types of real estate uses and potential, and in the light of further representations and material brought to the Committee's attention, its enquiries have been broadened to include consideration of foreign ownership of real estate generally.

2. Background Considerations

2.1 Canada and Ontario have traditionally been open to acquisition of real estate by interests outside the province and country. Many non-Canadians have taken advantage of Ontario's natural and commercial attractiveness. In considering whether new postures and approaches to foreign ownership of real property in Ontario would be desirable or appropriate, the Committee faced a number of difficult practical and philosophical issues.

Underlying Trends and Priorities

2.2 It is apparent that the pressures of economic and social development in the province, accentuated by social trends and environmental concerns, make the development of appropriate land use policies a major challenge for the 1970's. In recent years, and particularly in those areas of Ontario which are heavily populated, the demand for land for all uses has been exceptionally strong, and prices have risen steadily. So, too, have the problems which governments must attempt to solve.

2.3 Rising incomes, increased leisure time and related social trends have led to rapidly increasing public demand for residential and recreational facilities of all kinds. As the province's population has grown, and grown rapidly, providing for the housing and other needs of people has been a major challenge to both government and the private sector. In addition, Ontario has continued to develop economically, and the needs of industrial and commercial expansion increasingly interface with competing land needs and land uses.

2.4 Many areas in Ontario have high potential for a number of types of activity and use. Significant portions of the province are ideal for a variety of uses—recreational, industrial, residential, agricultural, mining or forestry. Even larger areas of Ontario are suitable for several but fewer uses or activities but the trade-offs are no less important. The increasing urgency and complexity of environmental priorities sharpen the constraints even further.

2.5 At the same time, it must be emphasized that the same problems do not arise in all regions of the province. Large and important areas of Ontario, particularly in the north and east, do not enjoy the same level of economic benefits as the southern part of the province. Their circumstances and their needs are frequently different, and these factors must be prominently taken account of in the formulation of policy. Nonetheless, concerns about the development, use and ownership of real estate and specifically of foreign ownership, are a matter of concern in virtually all areas of the province.

2.6 These developments have come to be associated with a number of areas of specific public concern. In recent years there has been dissatisfaction with the availability—in terms of supply, cost and distance—of both private and public recreational facilities for the people of Ontario. This has included public demands for increased public access to beaches, waterfront and other natural areas with recreational potential and appeal. In urban areas, supply

¹ *Preliminary Report of the Select Committee on Economic and Cultural Nationalism, Toronto, March, 1972.*

constraints and demand pressures have been associated with rapidly escalating real estate prices with disturbing impacts on the cost and availability of housing. In areas of the province with high agricultural potential, there is concern about the conversion of such lands to industrial and commercial uses. The Committee notes that the Government of Ontario, and the governments of other provinces, have been attempting to develop policies to meet these concerns.

Foreign Demand

2.7 In addition to these domestic considerations, it is apparent to the Committee that foreign demand is a significant factor to be evaluated in respect of real estate in the province.

2.8 To the Committee's knowledge, no systematic and comprehensive study of the extent and pattern of foreign ownership of real property in the province has been undertaken. The Committee explored the possibility of obtaining data from existing assessment rolls, but concluded that suitable data could only be developed for a few categories of land use, and only at considerable expense. The Committee did, however, review a variety of evidence. The Committee is satisfied that the level of foreign ownership of various categories of land in Ontario is significant. The nature and implications of foreign ownership of land and other real property and of various alternative policies are considered below.

2.9 On the other hand the Committee does not feel the issue of foreign ownership of land or other real estate is appropriately dealt with merely by arriving at a judgment about the present level and significance of foreign holdings. Attaining optimal development and land utilization for the people of Ontario and Canada demands long term perspectives and solutions. The Committee is of the view that the nature and patterns of foreign demand for real estate in Ontario merit careful consideration in this context.

2.10 An important source of foreign demand, as is widely known, is the United States. Two facts place the issue in stark perspective: the states neighbouring Ontario are among the most populous in the United States and the wealthiest in the world. Over one hundred million persons live in the northeast and north-central regions of the United States adjacent to Ontario, and with the exception of California, these areas have the highest incomes in the world. Travelling distances and time from the northeast/north-central U.S. are short, and similar languages, customs, laws and commercial practices facilitate trade, mobility and acquisition of property.

2.11 By contrast, there is generally a more abundant supply of land for all purposes in Ontario than in adjacent U.S. regions. Large areas of Ontario have high recreational potential which has been attractive to people both within and without the province. Further, the congenial living environment in Ontario has led some from U.S. cities immediately adjacent to the province to set up residence in bordering areas of Ontario, perhaps while continuing to work in the United States.

2.12 At the same time, it must be noted that population densities in Ontario are approaching those of adjacent U.S. regions:

POPULATION DENSITIES (persons per square mile)			
Southern Ontario	154.4	Illinois	199.4
Northern Ontario (organized districts only) ²	67.4	Indiana	143.9
Minnesota	48.0	Ohio	260.0
Wisconsin	81.1	Pennsylvania	262.3
Michigan	156.2	New York	381.3

Sources: Statistics Canada, 1971 Census; U.S. Department of Commerce, Bureau of the Census, Sixteenth Census (1970).

²Organized districts in Northern Ontario account for 3.4% of the land area and 90.7% of the population.

2.13 For other reasons, too, Ontario and Canada are and have been attractive places to buy land; and for real estate in general. From a general business standpoint, Ontario has been and is a desirable place to establish business operations. Further, particularly in or near urban regions, investment in real estate in Ontario has been attractive to both foreign and domestic investors. In particular, British, other European and Japanese investors, encouraged by the substantial upward revaluation of their currencies relative to the Canadian dollar, are active participants in Ontario real estate markets.

2.14 All these factors translate into significant foreign demand for land and buildings in Ontario, and point to an acceleration rather than an abatement of the acquisition of Ontario real estate by non-Canadians. The nature and implications of developing patterns and trends of foreign ownership are considered below.

Rights of Ownership and Access

2.15 It has already been noted that ownership of land poses difficult philosophical as well as practical issues. First, it is frequently claimed that owners of land have an inherent right, derived from common law or otherwise, to dispose of their property to whomever they please at the highest price. Clearly, such rights, if they ever existed, have been modified both by common law doctrine and by legislation such as that respecting planning and expropriation. Nonetheless, the Committee recognizes that land holdings constitute important assets and investments to both individuals and businesses in the province who understandably seek the highest return, usually obtained on sale. Clearly, a reduction in demand, foreign or otherwise, may lower the potential returns to sellers of land.

2.16 On the other hand, it cannot be overemphasized that land is a constrained supply commodity, and the more so when the different types of land and land use, and distance, are taken into account. Many citizens and residents of the province feel they have some claim to the benefits and enjoyment of the physical resources of Ontario, in the form of reasonable access to private ownership, reasonable costs of land as a component of shelter cost, and access to outdoor recreational facilities, to name the most common. In particular, they feel that their needs and claims properly override freedom of access to land ownership on the part of non-Canadians, or that land ownership, its use or its benefits as an investment asset are not appropriate commodities for export. Specifically, many feel all these factors are imperative grounds for modifying the rights of private owners of land in Ontario.

2.17 Other issues and factors too, must be evaluated and taken into account. Foreign ownership of real estate and the right to dispose of property are frequently associated with needed or desired local development. A significant percentage of industrial activity in Ontario is conducted by foreign owned corporations, who obviously need land and buildings in or on which to base their operations. In and near urban areas, agricultural and other land uses have given way to industrial and residential development, usually to the significant financial benefit of prior owners. In a number of areas of the province, foreign ownership of private recreational properties is associated with tourist income and other economic benefits to those regions and to the province as a whole.

Policies of Other Jurisdictions

2.18 The Committee also notes that Canadian concern about foreign ownership of real estate is not confined to the Province of Ontario, although some provinces' measures are directed to non-residents of the province, irrespective of citizenship. Most provinces in Canada, some as a result of recent policy, now give preferential access in some form to Canadians in the disposition of public lands. In each of Alberta³ and Saskatchewan,⁴ Committees of the Provincial Legislatures have in recent months reported on aspects of foreign ownership of land in those

³Legislative Assembly of the Province of Alberta, The Select Committee on Foreign Investment: *Interim Report on Public and Private Lands and Supplementary Report*, Edmonton, 1972.

⁴Legislative Assembly of Saskatchewan, *Final Report of the Special Committee on the Ownership of Agricultural Lands*, Regina, 1973.

provinces, and a Select Committee of the Nova Scotia Legislature has begun an enquiry into non-resident purchases of land. A Committee of the Manitoba Legislature is enquiring into foreign ownership in that province. The Government of Prince Edward Island currently reviews large purchases of land by non-residents and established a Royal Commission of Land Ownership and Land Use which submitted an interim report in January of 1973.⁵ The Province of Quebec has adopted measures regarding foreign or non-resident ownership of land and is understood to be considering further initiatives. Both Newfoundland and British Columbia have announced their intention to control foreign or non-resident acquisitions of land in their respective provinces. It may be noted, too, that the Government of Canada has expressed concern about foreign ownership of land.⁶ Foreign ownership of land was discussed at the 1973 meeting of Canadian First Ministers, leading to the establishment of a committee to study the question further.

2.19 Additionally, it may be noted that were Ontario or Canada to impose restrictions on foreign ownership of land, this might indirectly impair the ability of Canadians to obtain real estate in other countries or jurisdictions. For example, because Canada lacks an area with a warm climate the year round, many Canadians for vacation, health or retirement reasons seek and acquire property in the southern United States and elsewhere. Were Ontario to restrict purchases of land by non-Canadians, it might invite retaliatory measures against Canadians, or residents of Ontario. On the other hand, as the Committee has noted in its consultations abroad, some countries such as Switzerland, Sweden, the Netherlands, Mexico and New Zealand already prohibit or control the disposition of land to aliens. Additionally, the Committee is advised that many jurisdictions in the United States prevent or restrict the sale of both private and/or public lands to foreigners.⁷

3. General Conclusion

3.1 *The Committee has concluded, having regard to all the factors, that the present and future prospects justify new measures to preserve land as the physical heritage of the people of Ontario and Canada. Its views on various categories of land and land use, the status of persons, constitutional issues and other relevant matters are set out below.*

⁵Province of Prince Edward Island, *Interim Report of the Royal Commission on Land Ownership and Land Use*, Charlottetown, 1973.

⁶Speech from the Throne, January 4, 1973.

⁷See, for example, Ontario Department of Lands and Forests, *A Report on the Disposition of Public Land for Cottage Purposes in Ontario, Other Canadian Provinces and Neighbouring States*. Toronto, January 1971, and Paul E. Basye, *Clearing Land Titles*, 2nd Edition, St. Paul, 1970.

B. LAND OWNERSHIP AND LAND USE

4. Types of Ownership and Use

4.1 Real property may be both owned and used in a variety of ways, and in a variety of combinations of types of ownership and types of use. It may be owned directly by individuals, indirectly through trusts or other nominee devices, or by corporations. It may in turn be leased, licensed or mortgaged in a number of ways. Any given parcel of land may be suitable for a variety of uses—residential, recreational, agricultural, industrial, and so on—often constrained primarily by local zoning or other land use controls.

4.2 In its consideration of foreign ownership of land, the Committee has sought to emphasize the nature of the use to which real estate may be put, whether private, public or commercial, and the basis on which access to land or real estate should be available. Ultimately, land is of value to the province and its people for the use which may be made of it—for shelter, recreation or economic activity. At the same time, real estate continues to be valuable for speculative, investment, or other commercial purposes. The type of ownership may or may not affect the nature of the use to which land is—or is not—put.

4.3 The Committee confronted some complexity in examining various categories of ownership and use. In particular, it is often exceedingly difficult to distinguish what are purely residential uses from recreational uses, and the latter from agricultural uses. In the commercial arena, speculative investment in land may, for example, be difficult to distinguish from land assembly for desired housing and development. There is a further overlay of complexity provided by the large number of ownership or access devices which may be employed by both individuals and corporations. The mere selection of an ownership device may make it difficult to distinguish purely private from commercial ownership and use. All these factors make it very difficult to generalize from an analytical, policy, or legislative standpoint.

4.4 Nonetheless, the Committee is satisfied that in respect of foreign ownership of land and real estate in Ontario, a number of meaningful categories of ownership and use may be identified. In its approach the Committee has been concerned to ascertain the main lines of analysis and policy, not attempting to sort out every technicality or to usurp the role of the draftsman. In what follows, the reader is invited to keep in mind that, although not specifically mentioned, devices to circumvent the spirit and intent of the Committee's discussion and recommendations are not excepted or condoned. A detailed discussion of them has been omitted so as not to unnecessarily complicate examination of the main issues. Clearly, these various technical matters would require resolution at the implementation stage.

4.5 In the following chapters, various main categories of land ownership and land use are discussed. Chapter 5 focuses on ownership of land by individuals for residential, recreational and agricultural purposes. Commercial and corporate ownership of real estate including land under industrial use, and the real estate industries, is discussed in Chapter 6. Questions of public land and public access, including forest and mining lands, are explored in Chapter 7 while Chapter 8 notes the position of foreign legations. Chapter 9 concludes the section with some observations on information.

5. Ownership of Real Estate by Individuals*

5.1 Ownership of land by individuals is primarily for private residential or recreational use. In addition, some agricultural land is owned by individuals, as is real estate held by unincorporated businesses. Issues bearing on the latter are discussed in Chapter 6, Commercial and Corporate Ownership of Land. The present chapter focusses on ownership of agricultural, residential and recreational land by individuals.

Status of Persons

5.2 First, with reference to the various types of land and land use and the factors and policies which the Committee feels are appropriate thereto, a discussion of status of persons is appropriate.

*See p. 57 for dissenting opinions.

5.3 In respect of the right to own land in the province, persons may be distinguished on a variety of grounds. Persons may be Canadian citizens resident in the province, resident in other provinces, or resident outside the country. Aliens may or may not be landed immigrants or may be resident in or out of the province or country, for shorter or longer periods of time.

5.4 *Canadian citizens.* The Committee considers it unsound to distinguish between Canadian citizens resident in Ontario and those resident in other provinces of Canada as regards the legal capacity to own land in Ontario. The Committee feels that as a matter of Ontario law and policy, and recognizing the provinces' exclusive jurisdiction over property and civil rights, Canadian citizens from whatever province should be entitled to own land in Ontario. For similar reasons, the Committee is disinclined to distinguish between Canadian citizens resident in Canada and those resident elsewhere as regards ability to own land in Ontario.

5.5 *Landed immigrants* are accorded certain privileges under Canadian law, consistent with their presumed intention to become permanent residents of Canada. In its deliberations the Committee has been concerned to take account of the special position of landed immigrants, and their prospective entitlement to additional privileges on undertaking the further commitment of Canadian citizenship.

5.6 The Committee has considered whether or not landed immigrants should be treated differently from Canadians as regards real estate ownership. Landed immigrants might, for example, be permitted to enter into leasehold with an option to purchase on taking out full citizenship. The Committee is aware that many landed immigrants, like many Canadians, are very desirous of owning their own homes and recreational properties. On the other hand, homes in Ontario are not typically marketed on a lease/option to purchase basis, and it is not known how the real estate and real estate finance industries might respond to a mandated policy of this sort.

5.7 In the alternative, it has been suggested to the Committee that landed immigrants should be permitted to own land on the same basis as Canadian citizens, provided they become citizens of Canada within a reasonable period of time, perhaps six years.

5.8 In the Committee's view, a decision to become a Canadian citizen should be a matter of free choice. The Committee feels it would be inappropriate to legislate commercial inducements to Canadian citizenship or to apply pressure to become a citizen, such as the prospective loss of entitlement to own land after a certain period.

5.9 The Committee is also aware that should it be desired to permit landed immigrants to purchase real estate for residence purposes, but not to acquire other real estate, designing and enforcing appropriate regulations would be administratively cumbersome.

5.10 *British Subjects.* By virtue of tradition and constitution, Canadian citizens are British Subjects, and British Subjects who are not Canadian citizens are in Canadian constitutional law distinguished from aliens. They have frequently been accorded preferential status along with Canadian citizens, as in the right to practise certain professions. Many long standing residents of the province are British Subjects who have not elected to take out Canadian citizenship, although virtually all would be landed immigrants, or Canadian citizens by operation of law.

5.11 The Committee further notes that through the evolution of Canadian and British immigration law and policy and the entry of Great Britain into the Common Market, the status accorded British subjects in Canada, and the status accorded citizens of other Commonwealth countries in the United Kingdom, have undergone profound changes. The Committee has concluded that British subjects who are not Canadian citizens should be accorded the same status as aliens as regards land ownership. Further, as will be apparent later in this Report, any other determination would undermine the efficacy of the Committee's other determinations and recommendations.

5.12 *Residence.* In respect of all categories of persons, the Committee notes that for some purposes, "resident" in Canada or Ontario, appropriately defined, may be a useful basis for distinction. Persons ordinarily resident are typically involved in some substantial way with the life and economy of the province, pay taxes, and naturally seek to enjoy the many advantages

of living in Ontario. The Committee notes that many aliens may come to Ontario to live and to work, although most in this category, too, would probably be landed immigrants. Canadians are in a similar position abroad, on a permanent or temporary basis.

5.13 The Committee notes as well that it might be suitable to differentiate among different categories of non-landed aliens. For example, the Government of Ontario might wish to generally restrict alien acquisition on Ontario property, but provide an exception for persons seeking to retire in Ontario. Residents of Ontario might well be interested in reciprocal treatment of this kind in the United States and elsewhere. The Committee notes, however, that virtually all would enter as landed immigrants, and that existing Canadian immigration regulations offer favourable treatment to persons of means seeking to retire in Canada.

5.14 *Conclusion. Having regard to all these factors, the Committee has concluded that in respect of foreign ownership of land by individuals the operative distinction to be drawn is between:*

(a) *Canadian citizens, and landed immigrants resident in Canada, and*

(b) *others.*

The Committee's specific determinations with respect to individual land ownership are presented at the conclusion of the chapter.

Private Recreational Land

5.15 Foreign ownership of recreational land in Ontario has been the focus of much if not most of the public attention and concern. It is claimed that non-Canadians, with superior financial resources, have readier access to prime recreational sites and generally bid up the price of recreational land, making it less available to Canadians.

5.16 The Committee has already indicated that, so far as is known, no comprehensive study of the extent and pattern of foreign ownership of land in Ontario has been undertaken. In 1964, a study by R. I. Wolfe, now of York University, for the then Ontario Department of Highways,⁸ gave some indications of the origin of cottage owners in the province in that year. Professor Wolfe's study indicated that in 1964, 12% of the cottage owners in Ontario were from the United States. That study also shows that the highest percentage of non-resident owners—68%—occurred in the Windsor area with high percentages in the Kenora, Rainy River, Algoma, Manitoulin, St. Clair River and Lake Erie areas. Other information which has been brought to the Committee's attention indicates that foreign ownership of recreational land may be as high as 90% in some localities, and negligible or insignificant in many others.

5.17 The available evidence also indicates that foreign ownership of private recreational land is concentrated, as might be expected, in areas closest to U.S. population centres and access points into Ontario. These regions are also, by and large, the areas of highest Canadian demand in relation to the distribution of population in Ontario, or in the neighbouring provinces of Manitoba and Quebec, in the case of northwestern and eastern Ontario respectively.

5.18 The Committee also notes concern that recreational land, once foreign owned, may tend to be remarketed outside Ontario. A U.S. owner may find it more convenient to sell his land to prospective purchasers in his home city than to return to the province merely to seek a Canadian buyer.

5.19 No analysis has been done of the precise market position and effects of non-Canadian purchases of recreational land in Ontario. It is intuitively apparent, however, that where there are additional buyers with effective purchasing power in any market, available supply will be rationed at higher prices. As to whether non-Canadians have obtained a disproportionate amount of prime recreational land, the Committee can only note the incidence of foreign ownership of prime recreational land in the province, having no specific data on its prevalence.

⁸R. I. Wolfe, *Parameters of Recreational Travel in Ontario: A Progress Report*, Ontario Department of Highways Report RB-III, Toronto, 1966.

5.20 The Committee notes that many of the observations identified above as Background Considerations apply with particular force to the future availability of recreational land in Ontario. In particular, the very large population in regions of the United States adjacent to Ontario, those regions' high income levels, increasing demand for leisure and recreational facilities in both Canada and the United States, the relative unavailability of recreational land in the United States and the corresponding closeness and attractiveness of Ontario all suggest substantial foreign demand for recreational land in Ontario. A further factor which has been drawn to the Committee's attention is that new health and environmental regulations and priorities may limit the intensity of recreational land use in Ontario.

5.21 The Committee has concluded that foreign ownership of recreational land in Ontario is significant, and that it will, in the absence of new measures, increase in significance in relation to the desire of residents in Ontario for access to private recreational land in terms of supply, price, quality and distance from population centres. At the same time, the Committee recognizes the importance and desirability of tourism from the United States into Ontario and in particular into certain regions of Ontario.

5.22 The Committee has considered a number of alternative approaches. It has been suggested that Canadians should have first refusal on sales of recreational land or that there should be a preference period during which Canadians would have an opportunity to meet the best price offered by a non-Canadian. This technique might be expected to preserve the highest market price to the seller of land. It would not, however, be likely to lower the price to Canadians, who typically earn lower incomes than their United States counterparts. This approach would also be cumbersome to administer and to enforce.

5.23 The Committee has also considered whether or not future transfers of recreational land should be made only to Canadians, permitting non-Canadians to lease recreational land, perhaps with limitations on the length of lease or the leasehold acreage obtained. This approach would preserve and increase Canadian ownership of recreational land while permitting free access to non-Canadians on a lease basis, thereby facilitating tourism into Ontario. The Committee notes similarities between this approach and the present Ontario government policy in respect of Crown land for cottage lots.

5.24 The Committee is satisfied that measures are required to preserve reasonable access to recreational land for the people of Ontario in the face of substantial prospective demand from citizens and residents of other countries. *The Committee has concluded, and recommends, that all future transfers of private recreational land should be restricted to Canadian citizens and landed immigrants resident in Canada.**

5.25 The Committee is also desirous of encouraging tourism into Ontario. *To that end, the Committee has concluded, and recommends, that persons not Canadian citizens or landed immigrants resident in Canada should be permitted to lease recreational property for a maximum of 1 year, without option of renewal being included in the arrangement.†*

Private Residential Land

5.26 It is apparent that most land in Ontario held for private residential purposes is owned by Canadians. Many resident landed immigrants who have been welcomed to Canada also own their own homes. As a general matter, the Committee feels there is little evidence supporting concern about foreign ownership of private residences in the province, especially in urban areas.

5.27 However, persons who are neither Canadian citizens nor landed immigrants may own residences in Ontario, particularly in the Niagara region and the extreme southwest portion of the province, areas immediately adjacent to large U.S. cities. The Committee recognizes the possibility of premature development or over-development of border areas of the province in response to increasing demand from U.S. residents, and that in some cases, they may have acquired what would to Ontarians be considered prime recreational land. Many may continue to work in the United States.

*Mr. Newman dissents from this recommendation. See p. 57.

†Messrs. Kennedy and Walker dissent from this recommendation. See p. 57.

5.28 More important in the Committee's view is the very great difficulty of designing restrictions which attempted to differentiate between residential and recreational land, or in combination with differential treatment of categories of persons or geographic areas. Indeed, the Committee is apprehensive that such an approach would make such restrictions as were intended readily circumventable. Much real estate in Ontario is interchangeably residential or recreational. Administrative review or enforcement, especially if there were different rules for different categories of persons or geographical areas, could be expensive and complex. In any case, the extension to residential land of the Committee's recommendations regarding recreational property would do little, if any perceivable harm. *The Committee has concluded that its recommendations with respect to recreational land, including leasehold interests, should apply equally to land under residential use.**

Agricultural Land

5.29 The Committee has reached a similar determination in respect of private ownership of agricultural lands. (Foreign ownership of land under agricultural use is dealt with more fully in the chapter on Commercial and Corporate Real Estate Ownership). The Committee notes again the very great difficulty of distinguishing between property which may be under recreational as distinct from agricultural use, particularly in view of the current practice of converting agricultural land to recreational uses. The Committee accordingly favours the extension of its previous recommendations to include agricultural land. *In any case, the Committee has concluded that, apart from these difficulties, future acquisitions of land by individuals, including agricultural land and the opportunity to farm in Ontario, should be restricted to Canadian citizens and landed immigrants resident in Canada.**

Buildings and Improvements

5.30 The foregoing discussion has been cast in terms of land, omitting reference to other forms of real estate. The Committee has considered whether or not its conclusions concerning land should apply with equal force and effect to buildings and improvements.

5.31 Most of the buildings located on privately owned land would be for residential or agricultural purposes. In addition, many private owners improve their land in a variety of ways. Many improvements to land would not be separable from the land itself, in practice or in law. Other improvements, and buildings, are capable of separate legal existence and transfer, although as in the case of most private residences, this is frequently not done. Where buildings are sold separate from the land, they are usually located on land leased for very long terms. Real property such as a home or a cottage obtained on this basis would, in practical terms, be indistinguishable from outright ownership, other than with respect to rent paid for the site.

5.32 The Committee can find little justification for distinguishing as regards rights of foreign ownership between homes, cottages and farm buildings, on the one hand, and the land on which they are located on the other. Further, given the Committee's concern with both ownership and access for the people of Ontario and Canada, another determination would be inconsistent with the Committee's other conclusions. *The Committee has accordingly concluded that its previous recommendations with respect to land should apply to all real property acquired by individuals.*

Change in Status

5.33 In considering the desirability and workability of restrictions on future acquisitions of land by private individuals, the Committee has been aware of the problem of land acquired by an individual whose status is subsequently changed, by losing Canadian citizenship or resident landed immigrant status.

5.34 In this regard, the Committee is especially concerned about persons changing from landed immigrant status other than by becoming Canadian citizens. Because of the comparative ease of obtaining landed immigrant status in Canada, and the difficulty or expense which would be

*Mr. Newman dissents from these recommendations. See p. 57.

involved in ascertaining, on a continuing basis, resident or land immigrant status, the Committee is concerned about recommending policies which would contain a major loophole, or be largely unenforceable.

5.35 *The Committee has accordingly concluded that persons who acquire real property after the coming into effect of new restrictions, as landed immigrants, and who subsequently lose their landed immigrant status other than by becoming Canadian citizens, should be required to dispose of their real property so acquired, within a length of time reasonable for them to obtain an appropriate realization of their equity. Three years would under present circumstances appear to be a reasonable length of time.**

5.36 As regards Canadian citizens who subsequently lose their Canadian citizenship status, the Committee has come to a different determination. Canadian citizenship status is a good deal less accessible than landed immigrant status, and accordingly is a less attractive device for circumventing restrictions. In addition, it is probably a good deal more difficult to monitor land owners who are Canadian citizens who subsequently become citizens of another country. For these reasons, the Committee has restricted its determination in respect of change of status to those losing their status as landed immigrants.

Heirs

5.37 Finally, the Committee is aware that persons not otherwise eligible to acquire land in Ontario might in the future do so as beneficiaries under wills or intestacy. While the Committee is of the view such persons should be given reasonable opportunity to dispose of property so received, it does not consider that such persons or transactions should be excepted from general requirements regarding foreign ownership. *The Committee has concluded that ineligible heirs to real property in Ontario should be required to dispose of property so acquired within three years.†*

Real Estate Ownership by Individuals for Business Purposes

5.38 The Committee recognizes that across-the-board restrictions on acquisition of land and buildings by foreign individuals would operate to prevent their owning property in this way for business or investment purposes. The Committee was advised, for example, that there is significant direct investment in Ontario real estate by European individuals.

5.39 While the factors bearing on commercial ownership of real estate are discussed in chapter 6, the Committee notes in the present context that alternative techniques, principally incorporation, exist, and that providing for exceptions for business and investment would likely render the Committee's other determinations expensive or impossible to enforce.

Real Property Taxes

5.40 In addition to restrictions on ownership, it has been urged upon the Committee that changes should be made in respect of the taxation of property owners who are resident outside of Canada.

5.41 As regards taxes on real property, the Committee has considered whether or not it would be appropriate to empower municipalities to impose a surcharge on non-resident and/or foreign private owners of real estate in Ontario. In this connection, it may be noted that the Committee's recommendations have not been directed to the immediate repatriation of such lands to Canadian hands.

5.42 In the Committee's view, two considerations argue powerfully for giving local municipalities the authority to levy differential taxes of this sort.

5.43 First, many municipalities in Ontario, and particularly those in attractive recreational areas, are burdened with a high proportion of seasonal residents, making it difficult for them

*Mr. Newman dissents from this recommendation. See p. 57.

†Messrs. Kennedy, Newman and Rowe dissent from this recommendation. See p. 57.

to obtain reasonable revenue levels. While many residences and other facilities in these areas may be used for only a small portion of the year, the services they require, and particularly the so-called hard services, cannot be delivered or installed purely on a seasonal basis.

5.44 Second, the many non-resident foreign owners of land in Ontario do not contribute to the general revenues of the province through taxes on income, and other provincial revenue sources. Accordingly, and particularly in relation to developing patterns of municipal finance in Ontario, foreign owners of land not resident in the province would as a general rule contribute less than their fair share to the province in general, and to the localities of their seasonal residence in particular. On this basis, the Committee favours measures to correct this imbalance of foreign versus Canadian land owners, and the negative consequences it has for municipal revenues.

5.45 On the other hand, the Committee is of the view that differential taxes of this sort should be implemented on a local option rather than a province-wide basis. In this way both the fact and the level of differential taxation can be left, within certain limits, for individual local authorities to consider and decide upon.

5.46 *The Committee recommends that municipalities in Ontario be empowered to levy a surcharge of up to 50% of the real property tax otherwise applicable in respect of land owners in Ontario not ordinarily resident in Canada.**

Land Tax Sales

5.47 Public dissatisfaction with policy and practice in connection with the sale of lands by municipal and other local authorities to discharge property tax obligations has also come to the Committee's attention. The concern may in part reflect the resourcefulness of some non-Canadians in obtaining land by this route. The Committee notes that the latter would be dealt with by the Committee's recommendations regarding acquisition of real estate by individuals.

5.48 *While land tax sales are not exclusively a foreign ownership problem, the Committee notes dissatisfaction with present procedures and recommends for the attention of the Government a review of present policy and practice with particular attention to public advertisements, notification to adjoining owners, auctioning and tendering, and uniformity of procedure.*

Recommendations: Ownership of Land by Individuals

1. The Committee recommends, subject to recommendation 2, that all future transfers of legal or equitable (including leasehold) interests in real property in Ontario to individuals, directly or indirectly, be restricted to Canadian citizens and landed immigrants resident in Canada.†
2. The Committee recommends that individuals who are neither Canadian citizens nor resident landed immigrants be entitled to lease real property in Ontario for a maximum period of 1 year without option of renewal being included in the arrangement.††
3. The Committee recommends that persons who, subsequent to the implementation of recommendation 1, acquire real property in Ontario (other than by short-term lease) as landed immigrants resident in Canada, and who subsequently lose their resident landed immigrant status other than by becoming Canadian citizens, be required to dispose of property so acquired within a period of three years from the effective date of their change in status.‡
4. The Committee recommends that individuals otherwise ineligible to acquire real property in Ontario who are designated as beneficiaries of real property in Ontario under a will or intestacy be required to dispose of the property so acquired within a period of three years.**

*Messrs. Kennedy, Newman, Rowe and Walker dissent from this recommendation. See p. 57.

†Mr. Newman dissents. See p. 57.

††Messrs. Kennedy and Walker dissent. See p. 57.

**Messrs. Kennedy, Newman and Rowe dissent. See p. 57.

5. The Committee recommends that municipalities in Ontario be empowered to levy a surcharge of up to 50% of the real property tax otherwise applicable in respect of land owners in Ontario not ordinarily resident in Canada.*
6. The Committee recommends that the policy and practice with respect to real estate on which property tax obligations are in default be reviewed with particular attention to public advertisements, notification to adjoining owners, auctioning and tendering, and uniformity of procedure.

6. Commercial and Corporate Real Estate Ownership†

6.1 In addition to ownership of real property by individuals, a great deal of real estate in Ontario is held by corporations and by individuals for business purposes, the former reflecting the very widespread use of incorporation in Ontario.

6.2 There is very great variety in the types of commercial and corporate ownership and use of land and other real property in Ontario. Real estate is owned by a host of corporations in Ontario, small and large, private and public, and engaged in all manner of extractive, manufacturing and service undertakings. In agriculture, both family farms and large agri-business units have been incorporated. The real estate industries comprise a large number of firms engaged in a variety of activities, such as development and finance. In addition, there is considerable investment in real estate through corporations and other techniques.

6.3 It is the purpose of this chapter to explore and discuss the nature and implications of foreign corporate and commercial ownership of land and other real property in Ontario. In the sections that follow, the types and status of corporations who may own real estate in Ontario, foreign ownership of land under industrial use and foreign investment in the real estate and related industries are discussed. Some special observations about agricultural properties and tourist and resort facilities and a discussion of policy alternatives, conclude the chapter.

Status of Corporations

6.4 With respect to ownership of real property in Ontario, corporations may be distinguished on a variety of grounds, including jurisdiction of incorporation, ownership, and control.

6.5 Corporations incorporated in Ontario and under federal law are entitled to carry on business in Ontario. Their powers typically include the power to acquire, hold and dispose of land and buildings. Corporations incorporated in other provinces of Canada, or in foreign jurisdictions must obtain licences to carry on business in Ontario. In the former case, companies have a Canadian legal personality, while companies incorporated abroad have legal personality conferred on them by a foreign jurisdiction.

6.6 Corporations are owned through the ownership of shares, preferred or common, in various classes, and carrying various voting and financial rights. Generally, where it has been sought to restrict ownership of corporations, not only in Canada but also abroad, certain percentages have been adopted more frequently than others. Thus, fifty-one percent—representing majority ownership—has been proposed or implemented in connection with a number of foreign ownership matters in Canada and elsewhere. Mexico, the Committee has noted, employs the fifty-one percent rule in connection with its “Mexicanization” program. In Canadian law and policy, a so-called “twenty-five—ten rule” has been more common.⁹ Under a variety of statutes, relating to financial institutions in particular, it is required that not more than twenty-five percent of the shares of the corporation be foreign owned, and that not more than ten percent be owned by any one individual or associated group. In effect, these percentages required both substantial Canadian ownership, and Canadian control. *As regards an ownership level, the Committee is impressed by seventy-five percent, representing both substantial Canadian ownership while permitting some flexibility for the participation of foreign equity capital. This ownership level is adopted by the Committee in its subsequent recommendations.*

*See Ivan R. Feltham, Q.C., and William R. Rauenbusch, “Canada and the Multinational Enterprise” in Hahlo, et al, eds., *Nationalism and the Multinational Enterprise*, Sijthoff, Leiden, and Oceana, Dobbs Ferry, New York, 1973, pp. 53 et. seq.

*Messrs. Kennedy, Newman, Rowe and Walker dissent. See p. 57.

†See p. 58 for dissenting opinions.

6.7 Foreign control is a good deal more elusive a concept. Particularly in respect of companies whose shares are widely traded on public markets, a very small percentage of the outstanding shares may confer *de facto* control on its owners. Even where there are relatively small numbers of shareholders, voting patterns and interests may be such as to lead a minority of shareholders to have control. There are also a variety of non-ownership control devices in common use, such as certain forms of franchising. Although the Committee will be reporting on these matters in more detail in other reports, it may be noted for present purposes that it may be a good deal more difficult to determine the implications of control as opposed to the implications of ownership, the latter having primarily financial consequences. The present report emphasizes ownership as opposed to control.

Foreign Ownership of Industrial Real Estate

6.8 As is widely known, a high percentage of industrial activity in Ontario is carried on by businesses and corporations which are foreign owned or foreign controlled. Clearly the conduct of business in the extractive, manufacturing and services sectors requires land and real estate in or on which to conduct operations. The Committee feels it would be inappropriate to deprive foreign corporations of the right to use land on which to conduct their business activities. The Committee has, however, given consideration to whether or not ownership of real estate by foreign corporations is the most appropriate vehicle, or whether in the future, alternative techniques, such as leasing, should be mandated.

6.9 In respect of foreign owned corporations, ownership of real property as contrasted with leasing gives them title to the potential returns of appreciating assets,¹⁰ rather than merely the incurrence of business expenses through taxes, financing charges, or rent. Full equitable ownership of real estate may be progressively acquired through mortgage or other financing through Canadian or foreign lending institutions. (Available statistics indicate foreign-owned subsidiaries are largely financed from Canadian sources¹¹.) In effect, revenue from the conduct of business is capitalized into the ownership of real property. Once owned, land and buildings typically constitute assets on which an earned return is sought, in addition to any returns from appreciation in their value. It is estimated that real property, presently held by foreign-controlled corporations, is book-valued in excess of ten billion dollars, or about 25% of net capital employed.

6.10 If foreign-owned corporations were not permitted to purchase but only to lease land or other real property in Ontario, the process would be somewhat different. Rent paid would generate an income stream to Canadian owners. The capitalization of revenues into a key asset financed from Canadian sources, and on which a return is sought by the foreign-owned corporation would be avoided. It would be unnecessary for Canada to generate foreign exchange earnings for the purposes of liquidation and/or repatriation, in either eventuality. In effect, future restrictions on land or real estate ownership to Canadian-owned corporations would limit the growth of foreign ownership claims against Canada.

6.11 It was argued before the Committee that denying real estate ownership to foreign-owned corporations, although affording ready access to land and buildings on a lease basis, would discourage foreign investment and development in Ontario. For example, it was contended by some that such a policy would increase the costs of doing business in the province or lessen the attractiveness of Ontario to foreign investors.

6.12 The Committee is not convinced that the cost of financing of leases would be significantly higher than the financing and servicing of land ownership through debt or mortgage techniques.

6.13 First, the Committee notes that the cost of both mortgaging and leasing would, in the ordinary course of events, be deductible as business expenses against income for tax purposes.

¹⁰It is recognized that land may occasionally depreciate in value and that buildings typically appreciate and then depreciate during their useful life.

¹¹See Statistics Canada, *Corporations and Labour Unions Returns Act Report for 1970*, Part I, Ottawa, 1973; Department of Industry, Trade and Commerce, *Foreign-owned Subsidiaries in Canada, 1964-69*, Ottawa, 1972.

6.14 Second, as was pointed out to the Committee leasing of land, building and other fixed assets is an increasingly widely used financing technique in business. It is typically used to free up capital for investment or other purposes. In the absence of ownership restrictions, lease and sale-lease back financing have grown rapidly in recent years in Ontario as an alternative to conventional debt and mortgage arrangements. Further growth would be a logical consequence of increased demand for leased premises for industrial purposes. Further, foreign corporations would be freer to commit available capital to new plant and equipment and other applications directly related to industrial operations.

6.15 The Committee further notes that, as regards availability, leasing companies would be in a position similar to that of real estate agents and brokers in locating suitable sites and facilities for their clients.

6.16 The Committee draws very firm distinctions between ownership of land, and foreign investment in industrial activity. Nonetheless, because Ontario and Canada have been traditionally open to real estate ownership by foreign-controlled corporations, a change in policy may lessen the psychological attractiveness of Ontario to foreign investors and managers. The Committee does not feel that this factor outweighs the preservation in Canadian hands of land ownership and the benefits identified above.

6.17 The Committee is also aware that restrictions on ownership of real property by foreign owned corporations might have future implications for Canadian-owned companies, if, for example, their foreign share ownership should substantially increase, or if they should seek to dispose of their assets to a foreign-owned company. The Committee assumes that the resilience and ingenuity of real estate and financial institutions in Ontario are sufficient to overcome these impediments where appropriate. Leasing and sale-leaseback are obvious techniques. Other responses might include, in appropriate cases, a public share issue in Canada as an alternative to foreign ownership. The Committee notes the positive impact this might have on the development of Canadian capital markets.

6.18 The Committee would also draw attention to a further possible implication of restricting ownership of industrial real estate to corporations owned in Canada. It is frequently claimed that foreign-owned subsidiaries, irrespective of their size, have superior access to debt and credit in Canada because they are backed by a strong foreign parent. If Canadian-owned companies had preferred access to real property ownership, they would in some cases have improved access to prime collateral for bank and other debt finance. To the extent that underlying physical assets also contribute to an ability to attract equity finance, through public issues or private placements, Canadian-owned companies would be similarly favoured.

6.19 On the other hand, these same arguments together with the return to be earned on the asset make acquisition of real estate for industrial purposes attractive to foreign-owned corporations. The Committee believes that restrictions on foreign ownership of land would have little or no effect on industrial activity or overall demand for land for industrial use.*

Nonetheless the Committee recognizes that the financial advantages of land ownership could be a deciding factor in a decision of a foreign-owned company to locate in Ontario. The Committee anticipates that industrial enterprises likely to be deterred by restrictions on land ownership are likely to be few in number and marginal in character.

6.20 The Committee recognizes that special circumstances may exist. The Committee understands, for example, that while many industrial buildings and improvements are adaptable to many purposes, others are very highly specialized or have only limited alternative markets or uses. A foreign-owned business denied the opportunity to construct or own real property of this sort might find it difficult to meet its needs under lease or license, since industrial financing and leasing are generally predicated on alternative markets, for reasons of risk minimization.

6.21 As a final point, the Committee notes that restrictions which applied only to future transactions would be unlikely to have disruptive market and other effects.

*For Mr. Martel's comment. See p. 59.

Foreign Investment in Real Estate in Ontario

6.22 In addition to real estate held by corporations for industrial purposes, land and buildings are also acquired for a variety of commercial, development, investment and speculative purposes, and by those engaged in the regular buying and selling of real estate. It may be noted that the land holdings of the real estate and related industries amount to almost as much as the land holdings in all non-financial industries in Canada, of the order of \$2.3 billion.¹² Total real property holdings would be correspondingly higher.

6.23 The real estate industries comprise a range of activities including home, apartment, office and commercial development; investment in raw, serviced, or improved land or buildings; real estate services such as construction and building management, engineering and architecture; and real estate finance, principally through mortgage and leasing activity. Within these various categories, further distinctions may be drawn. For example, investment in predevelopment land may differ substantially from investment in urban properties or existing buildings. Similarly, development of major downtown commercial projects may be distinguished from conventional subdivision developments.

6.24 The magnitude of foreign investment or ownership in Ontario real estate is not precisely known, but is known to be considerable¹³. It has been suggested to the Committee that a substantial majority of acquisitions of downtown real estate in the last few years has been associated with foreign interests. It is known that foreign-owned developers constitute a significant proportion of that industry.¹⁴ Foreign interests have been associated with a number of prominent commercial developments, including major downtown office buildings and suburban shopping centres, and with investment in large tracts of land outside or adjacent to urban areas, in both northern and southern areas of the province. Foreign-owned mortgage finance, trust and land leasing companies have for some time been significant in their respective sectors. It can reasonably be estimated that foreign commercial ownership of real estate in Canada and even in Ontario, excluding foreign-owned industrial corporations, amounts to several billions of dollars, and is increasing annually.

6.25 Among foreign investors, European, Japanese, and American interests appear to be the most prominent. It is also possible that present or prospective large pools of money from such sources as oil-rich Middle Eastern countries may find investment in Ontario or Canadian real estate particularly attractive. Further, every variety of acquisition technique appears to have been employed, including direct purchase; investment via wholly-owned corporations, trusts, and other intermediaries (such as trust companies); joint ventures; equity or profit participation in connection with mortgage financing; investment in existing real estate companies; options, and a variety of complicated contractual arrangements; and these in addition to the ongoing activities of foreign-owned developers and mortgage finance and land leasing companies. The Committee further understands that real estate investment trusts, recently established and approved as an investment vehicle in Ontario, may be employed as conduits for foreign investment in real estate in the province, for both equity and mortgage investment and participation.

6.26 In addition, it is said that investment patterns may vary somewhat between various countries of origin, reflecting such factors as investor preferences, and taxes. It has been suggested, for example, that some European interests are generally more attracted to equity investment in downtown commercial buildings (although there is also European ownership of non-urban tracts), while American funds tend to be channelled more into mortgages. A further case of foreign ownership of land which has come to the Committee's attention involves com-

¹²Statistics Canada, *Corporation Financial Statistics, 1970*, Ottawa, 1973.

¹³For example, it was given in evidence before the Committee that 95 per cent of the property managed by the Metropolitan Trust Company is foreign owned. Company officials claim they account for one-third of this type of trust company business in Canada, and estimated the annual inflow of foreign equity into investment properties at \$40 to \$50 million, representing acquisitions of \$200-250 million.

¹⁴Representatives of the Urban Development Institute estimated before the Committee that of the order of 50% of the developable land in Zone 1 of the Toronto Centred Region is owned by foreign-owned developers.

panies engaged in marketing Canadian land in the United States and abroad. In some cases, these businesses are primarily finding operations, drawing tax sale, or other land availability to the attention of prospective foreign purchasers. In other cases there may be actual acquisition and remarketing.

6.27 The following factors appear to be associated with past and present foreign investment in real property in Ontario.

6.28 First, real estate has traditionally been an attractive investment. There is intense international competition for real property holdings in promising areas or jurisdictions. In buoyant, wealthy economies like Ontario's, it is the more attractive, particularly in view of the strong underlying demand for real estate for housing, recreational, commercial and industrial purposes.

6.29 Consequently, foreign-owned firms in most of the real estate industries have been active in Ontario for some time while new foreign participants continue to be attracted to commercial real estate markets in the province.

6.30 At the same time, there have been few or no direct controls on foreign ownership of land or real estate in Ontario, although all investors, foreign or otherwise, are subject to land use controls of various kinds and other regulations of general application. Indirectly, however, loan, trust and investment (finance) companies have in recent years been made subject to non-retroactive ownership strictures in the federal and Ontario statutes applicable to corporations in these categories. The Ontario Securities Commission policy statement on real estate investment trust imposes modest conditions on foreign investment in these investment vehicles. In addition, it has been argued, though disputed by the Minister of Industry, Trade and Commerce, that the Foreign Investment Review Bill, in its present form, would apply to many commercial acquisitions of real estate by foreign-controlled firms within the dollar thresholds and other rules embodied in that Bill.

6.31 Other factors have led to substantially increased foreign investor interest in recent years and months. In relation to land availability and price levels prevailing in more densely populated areas, and especially Europe and Japan, Ontario real estate has been particularly attractive. In some instances, peculiarities of foreign tax law appear to provide a further incentive to acquisition of real property in Canada.

6.32 A factor of further and perhaps greater importance, both presently and prospectively, is the substantial upward revaluation of the European and Japanese currencies, of the order of 40 per cent against the Canadian dollar in the last two years. Not only has this served to place a particularly attractive foreign-currency value on real estate in Ontario, it has also provided a powerful incentive to off-shore investors to protect the higher value of their currencies and portfolios through investment in high quality undervalued dollar-bloc assets such as Canadian real estate.

6.33 Finally, it is said that the prospective or uncertain application of the proposed Foreign Investment Review Act, combined with the general Canadian tradition of non-retroactive introduction of restrictions, has accelerated foreign acquisitions of real estate in Ontario.

6.34 Foreign ownership of and investment in real property is said to be associated with the following implications and concerns.

6.35 First, there are the financial implications of foreign ownership, of the sort identified in the discussion of foreign ownership of industrial land.

6.36 More importantly, it is said that foreign investment is contributing to inflation of land and other real property values, particularly in urban areas.

6.37 The strong underlying patterns of demand for land and the buoyancy of real estate markets in Ontario has already been identified. In addition, the present structure of land

and real estate markets in Ontario, and particularly in and near urban areas, is such that additional increments of capital provided by foreign investment, or any additional investment or competition, may take on a market significance out of proportion to the magnitude of the addition. In the face of intensifying development pressures, especially in and near metropolitan areas, there is concern that competition for available sites between both foreign and domestic capital is artificially raising the cost to ultimate users, particularly for housing.

6.38 In particular, overinvestment or speculation in raw or predevelopment suburban land may, while yielding substantial returns to scarcity to owners, stimulate a speculative wave across other forms of real estate producing higher costs to purchasers and limiting the scope for subsequent public action.

6.39 Additionally, there is concern about substantial foreign investment in urban commercial developments, both new and existing. It is claimed that, through market linkages, hyperinvestment of this sort is putting undue upward pressure on residential real estate prices and shelter costs. It is further argued that office and other commercial real estate development proceeding well ahead of demand in the face of persistent supply and distribution problems in housing and shelter, represents a serious incongruity of market performance with social objectives and requirements.

6.40 The Committee notes that the extent and significance of these patterns may vary across parts of the province. Land prices and land availability are most acute in urban southern Ontario areas and the development industry is, to say the least, developed. In parts of Northern Ontario, there is also concern about the cost and availability of residential and recreational real estate, but sometimes difficulty is experienced in attracting development capital and entrepreneurship. Nonetheless, dissatisfaction with foreign ownership of real estate occurs in a variety of parts of the province.

6.41 There has also been significant foreign investment in rural, recreational and wilderness land. Where large tracts of land are acquired by foreign, often non-resident interests, there is concern that acreage is taken off the market, that prices to future Canadian purchasers in the area will be higher, and that the principal beneficiary is the foreign investor. In some areas, and particularly in the northern part of the province,¹⁵ there is concern that large blocks of foreign money are acquiring extensive tracts, and that the owners may in the future be in a position to control, manipulate, or profiteer on the future pattern of development, to their own substantial financial advantage, but to the detriment of local communities and residents.

6.42 The Committee notes further, that foreign investment of this sort is not associated with job creation, new technology, market access or similar benefits which may be associated with other types of foreign investment.

6.43 Others, and especially those in the real estate industries, maintain that foreign capital is a harmless, beneficial or necessary, rather than a detrimental, factor in real estate markets and development in the province for the following reasons.

6.44 First, it is emphasized, care must be taken to not ascribe to foreign investment aspects of behaviour or performance of real estate markets in the province which are really general, rather than foreign investment specific, problems. For example, real estate activity is traditionally sensitive to a variety of economic conditions, and specifically to business cycle fluctuations, and shifting patterns of supply and demand for housing and other land uses. These matters bear heavily on the extent to which measures of general application as opposed to foreign ownership-specific policies would be most appropriate or fair to deal with identified problems and perceived public policy concerns.

6.45 Second, many would argue that foreign capital is absolutely required for commercial real estate development in Ontario, although distinctions are not frequently enough drawn

¹⁵See Sawchuk and Peach, *Background Papers*, The Official Plan for the Sault Ste. Marie (North Section) Planning Area, Sudbury, March, 1973.

between selective access for foreign capital, such as debt rather than equity, and continued open access for foreign investors to real estate in Ontario.

6.46 It is argued that foreign investment is both required for, and makes a positive contribution to, the development of housing in Ontario and particularly in urban areas. It is contended that recent and prospective shopping centre developments would have been impossible without foreign capital. With respect to downtown areas, it is urged that if foreign investment were restricted, these areas would lose a good deal of their economic dynamism, with negative multiplier effects to the surrounding areas. In particular, it is said that foreign investment is associated with a level of development and entrepreneurship not available in Canada, and that foreign purchases of existing real estate have the desirable effect of freeing up capital for further development. In any case, it is said that their potential for varied densities makes downtown areas more adjustable to market conditions; although the Committee notes that this contention assumes that density is an appropriate substitute for additional land, with all the latter's characteristics in terms of accessibility, topographical features, distance and cost, and the former's environmental impact and appearance.

6.47 The Committee is aware that a declared need for foreign capital in Canada has been a traditional argument advanced in support of free access for foreign investment into Ontario and Canada. On the other hand, the Committee understands that accumulating evidence increasingly casts doubt on the validity of the general proposition that Canada, let alone Ontario, are—or should allow themselves to be—substantially capital-poor in relation to investment requirements. To the contrary, the Committee is advised that many informed persons maintain that, on an overall basis, both Canada and Ontario are substantially capital self-sufficient. While there may be specific capital needs which at any given time cannot necessarily be met from Canadian sources and institutions, it is increasingly accepted that the Canadian financial markets are largely able to meet the range of financial requirements for the province and the country. With particular reference to the real estate industries, available evidence and prevailing concern suggest that there is rather too much than too little capital seeking real estate investment outlets in Ontario.

6.48 In any case, the Committee is of the view that the alternatives are not restricted to free access for foreign capital on the one hand, and complete prohibition on the other.

6.49 For example, if the purchase of land in Ontario were restricted to companies of which some specified percentage was owned by Canadians, there could still be substantial room for foreign equity participation. As the corporations grew, the equity base, and accordingly the opportunity for foreign capital to participate, could expand.

6.50 Further, restrictions on *ownership* need not deny access of all foreign capital to real estate markets and development in Ontario. Indeed it is possible that the effect of restrictions on foreign ownership of land might tend, at least somewhat, to channel foreign funds into mortgage rather than equity participation in Canadian or Ontario real estate. Both Canada and Ontario have quite obviously been attractive places to the mortgage finance industry. Were there to be additional foreign capital channelled into mortgages in Ontario, it might have a desirable impact on the cost and supply of mortgage funds in the province. On the other hand, where it was desired to attract and to continue to attract considerable mortgage capital from outside Canada, it would be necessary to ensure appropriate and secure protection of the mortgagee's interests and specifically his legal entitlement to foreclosure on default of the mortgagor's obligations. The Committee is advised that procedures of the kind which are being worked out in connection with amendments to the proposed Foreign Investment Review Act could suitably accomplish this objective.

6.51 On the other hand, some claim that restrictions on foreign equity investment in real estate in Ontario would perforce depress foreign mortgage capital availability because of the alleged debt-equity capital link. In exploring this matter, the Committee was offered evidence disputing this connection. A trust company handling significant numbers of European acquisitions of real estate testified that it typically "finds" mortgage capital for equity investors. It was stated in evidence before the committee that profit sharing, as distinct from

ownership participation was a standard "piece of the action" formula sought by mortgage lenders. The evidence of two foreign-owned developers indicated that their parent companies were not an ongoing source of capital, except perhaps in special circumstances, such as takeovers. On this basis the Committee doubts that restrictions on foreign equity participation in Ontario real estate would significantly affect the inflow of foreign mortgage capital.

6.52 Perhaps most importantly, the Committee has already drawn attention to the fact that citizens and residents of Ontario feel they have some claim to the benefits and enjoyment of the physical resources of the province in the form of reasonable access to private ownership and reasonable costs of land and shelter. The Committee is concerned that unrestricted foreign investment in Ontario real estate is likely, through upward pressure on prices and reduced availability to individuals, in relation to cost, location and amenities, to conflict with these desires of citizens and residents of Ontario.

6.53 The Committee is convinced that insufficient benefits result from direct foreign business investment in real estate, and especially in land. As already noted, such foreign investment is not typically associated with job creation, technology, market access and other benefits to the Canadian economy. No doubt some benefits may accrue to Canadian sellers of land. The Committee also recognizes that real estate brokers, lawyers, and surveyors benefit from foreign acquisitions of real estate, and that restrictions might somewhat depress the market for their services. The Committee is satisfied, however, that the long term prospects for real estate markets in Ontario are more than promising. The more important consideration is that availability of land and other real property at reasonable cost is a key element in the future quality of life in the province.

The Real Estate Development, Finance and Related Industries

6.54 While there may be excessive foreign investment in Ontario real estate leading to undesirable market effects, the real estate industries comprehend a number of useful and essential functions in which foreign owned firms participate. These include the development of new residential and commercial facilities, associated and support services, and real estate finance. At the same time however, firms engaged in real estate development, services, or finance, may also be engaged in investment or speculation in real estate. This factor at one and the same time would make it difficult to distinguish between unwanted foreign investment and other activities, and invites consideration of the implications for foreign owned firms in these areas should their ability to purchase land be restricted.

6.55 With respect to developers, it has already been noted that foreign owned firms and foreign ownership interests are prominently involved in residential and commercial development of all kinds. It was argued before the Committee that land being a basic raw material and buildings an ultimate product of the development industry, restrictions on foreign ownership of real property would impair or prevent foreign-owned developers from operating competitively or operating at all.

6.56 The development industry takes the position that their activities are of unquestioned benefit to the province and the country, and that there should be fewer rather than more restraints on their activities. It points to its role in catering to a high governmental and social priority, the provision of housing. It argues that restrictions on the development industry have invariably led to higher costs for housing. As regards shopping centres and similar developments, it is urged that such developments are of substantial benefit and convenience to the consumer and stimulus to the economy. In its overall role in development, redevelopment and construction, the development industry is said to be associated with activities critical to economic health and welfare: investment in and construction of physical plant, creation of substantial employment, especially in the policy-troublesome unskilled category, and numerous multiplier effects. It is argued that foreign capital is required for real estate development and that foreign owned developers behave as well or better than Canadian developers.

6.57 The Committee doubts that these points of view establish a positive case for the desirability of foreign ownership of real estate in Ontario, the need for foreign equity as opposed to

debt participation, and the relative desirability of the various activities in which foreign owned developers may be engaged, including investments or speculation in land. In addition, a number of specific points are germane to the position of developers in general and foreign-owned developers in particular.

6.58 First, it is generally claimed that the development industry has a strong interest in rising land values. In its defense, developers maintain that the overall profits they make are a good deal less than might be assumed. Specifically it is claimed that large profits made on land turnover are not pure profits because they must be applied to acquire a further supply of land at higher prices. While it may be that foreign-owned and Canadian developers do not behave in any significantly different respect in this connection, the desirability of this process at least requires further examination. It may be, for example, that the overall behaviour and performance of real estate markets in this category are not in the public interest, and that access to foreign capital aggravates rather than alleviates identifiable problems.

6.59 Second, foreign owned developers may well respond, at least to some extent to different sets of criteria and relative investment objectives, as compared to corporations purely oriented towards local Canadian markets. This may apply with particular force to companies whose overall enterprise response is to differentials in real estate market conditions among several countries and particularly with respect to Europe. Given the special economic characteristics of land, it might be desirable to insulate land and real estate development in Ontario from the relative investment factors to which a multi-national developer or investor may respond.

6.60 Third, substantial participation of foreign capital in urban development, including apartments, office buildings, shopping centres and so on, raises questions in some minds about the development of the Canadian urban environment and culture. It is argued by some that the prominent participation of foreign owned developers in both downtown and suburban development in Ontario may lead to Ontario metropolitan areas taking on unwanted characteristics of United States downtown cores or suburban sprawls.

6.61 Others would dispute this. There is little evidence, for example, that Canadian-owned developers do or would behave any differently as regards the nature or design of residential and commercial developments. In any case, and as the Committee has noted elsewhere in its studies,¹⁶ some Canadian corporations, and especially Canadian banks, have been persistent employers of foreign design services in their major buildings. Apart from that, it has been contended that foreign investors and developers have provided a level and calibre of entrepreneurship which has failed to manifest itself from Canadian sources. In addition, concern about the nature and pattern of development may be more properly a matter for municipal and planning authorities.

6.62 Fourth, the Committee is aware that the argument is advanced in respect of foreign owned developers of single family residences, that the land and real estate is ultimately returned to Canadian ownership. On the other hand, the Committee notes that this is not true of apartments and other forms of development; is not separable from investment and development which remain under foreign ownership and control; and does not meet the implication of additional site competition from the presence of substantial foreign investment or ownership in real estate industry.

6.63 An additional factor is the feasibility of providing development services on or to leased land. On the basis of evidence presented to it, the Committee doubts that land must be owned to provide services, prepare plans of subdivision, secure approvals or construct buildings, although the Committee recognizes that the attraction of these activities is frequently founded on anticipated profits from real estate ownership or turnover. It was given in evidence before the Committee that it is now a reasonably established practice for buildings to be constructed on land under lease.

¹⁶See Kates, Peat, Marwick & Co. study on *Architects and Engineering Consultants*, commissioned by the Select Committee on Economic and Cultural Nationalism, forthcoming.

6.64 Similar considerations apply to related real estate services including building and project design, project and construction management, and building management on completion. In the case of many companies operating in Ontario, some or all of these functions are combined with ownership of land and buildings. Among them are included a number of firms which are presently foreign controlled. Were foreign controlled corporations in this category, immediately or over a period of time, denied the opportunity to own land or real property in the province, the question arises whether or not such measures would interfere with their continuing ability to provide real estate related services. To the extent that factors such as entrepreneurship, building management, and design may be associated with these real estate related activities, strictly speaking restrictions on ownership of real property should not interfere. On the other hand, the attraction of these activities is also frequently founded on anticipated profits from real estate ownership or turnover of land.

6.65 Real estate finance comprises the other major real estate industry sector. Both foreign and Canadian firms are engaged in various aspects of real estate finance, primarily mortgage, lease and sale leaseback financing. Firms of the latter types acquire land and other fixed assets to lease or lease back to clients. The Committee has already noted the growth of this financing technique, and that its further development would be a likely consequence of restricting the ability of foreign owned corporations to own land, or other real estate.

6.66 There are already ownership restrictions in most types of financing institutions in Canada. Under the federal jurisdiction, banking, trust companies, loan companies, life insurance companies, and investment companies are restricted as to the amount of foreign share ownership, non-retroactively in all but banking. In Ontario, provincially incorporated loan and trust companies and securities dealers are subject to similar provisions respecting Canadian ownership and control. In other words, there are already in force restrictions on those engaged in real estate finance, although many foreign firms continue to operate in Canada by virtue of the operation of "grandfather" clauses in the relevant federal and provincial legislation.

6.67 If it was desired to restrict foreign ownership of land or real property generally in Ontario, the extension of such restrictions to the real estate finance industry, while accomplishing consistency with restrictions on foreign ownership in other areas, would, in effect, extend present restrictions to cover all firms rather than simply new entrants, or limit foreign-owned firms to financing activities not requiring them to actually own land or real estate.

6.68 The Committee notes that foreign investment and ownership in this sector is to be distinguished in terms of benefits and costs from foreign direct investment in the manufacturing or resource sectors. Investment motivation is not founded on product distinctiveness as in manufacturing, desire for secure access to raw materials and economic rents in the case of resources, or technological capability in respect of both.

6.69 Real estate finance is primarily geared to obtaining a direct association of financial capital with secure physical assets, land and buildings, at the most attractive rates. Because real estate financing expertise is highly developed in Canada, foreign firms do not offer significant technological advantages. As in other financial sectors, innovations, not being susceptible to patent or other intellectual property protection, are readily transfused or duplicated internationally at very low cost, subject to compatible local laws and regulations. Sale-leaseback financing and real estate investment trusts are recent examples.

6.70 Further, the Committee notes that many or most firms engaged in real estate finance are also engaged in other real estate activities, including the purchase of or investment in real estate for their own or others' accounts. Specifically, foreign owned firms engaged in real estate finance, including leasing, may be the source of conduits for foreign speculative investment in land. Again, problems of definition, drafting and enforcement confront the attempt to provide an exception for foreign owned investment finance activity, were restrictions on foreign ownership of land deemed otherwise desirable.

Agricultural Lands

6.71 Ontario is blessed with a rich endowment of productive agricultural land and agriculture is of high importance to the economy and people of Ontario. As in other categories of land use, the committee encountered concern about foreign ownership of agricultural land, particularly in connection with backward integration of foreign owned food processors and manufacturers.

6.72 In regard to land under agricultural use, the Committee was interested to note that Farm Credit Corporation loans are made only to Canadian citizens and landed immigrants, or to corporations whose controlling shareholders are Canadian citizens or landed immigrants. The Committee also notes recent concern about foreign ownership of agricultural land in the Province of Saskatchewan.¹⁷

6.73 In Chapter 5, the Committee concluded that future transfers of agricultural land to individuals should be restricted to Canadian citizens or resident landed immigrants. The Committee is aware that many farmers in Ontario, as elsewhere in Canada, incorporate their farming businesses for tax, estate planning or other reasons. In addition, there are operating in Ontario a number of larger, agribusiness firms, a number of which may be foreign owned or foreign controlled. In the Committee's view, these latter are appropriately viewed, as regards real estate ownership, as users of land on the same basis as other industrial corporations, and the above discussion in connection with industrial land would apply.

6.74 With specific respect to vertical integration of agriculture in Ontario, the Committee notes a recent report by the Economics Branch of the Ministry of Agriculture and Food.¹⁸ That report estimated that 2.6% of farm cash receipts in 1970 in Ontario were accounted for by ownership integration, while contract integration accounted for an additional 8.5%. While observing the relatively modest level of vertical integration in Ontario, the Committee notes that many of the vertically integrated firms in Ontario are foreign owned.

6.75 At the same time, the Committee is not persuaded that vertical integration is strictly speaking a problem of foreign ownership or foreign ownership of land. Accordingly the Committee makes no special determination at this time with respect to vertical integration in agriculture, other than to note that it appears to be more typically accomplished by non-ownership techniques. This factor would seem to imply that restrictions on foreign ownership of real estate would be unlikely to affect patterns of vertical integration in the province.

Commercial Recreational, Tourist and Resort Facilities

6.76 The Committee notes that the preservation of the recreational potential and appeal of Ontario's natural endowment for future generations is an important part of the quality of life in Ontario. Recreational facilities may in this context be viewed as public trusts under private development. The Committee has observed that the development and provision of tourist facilities are an important and attractive part of the cultural heritage and tradition of many countries.

6.77 To that end, the Committee is of the view that it is generally desirable that commercial recreational, tourist and resort facilities in Ontario be owned and developed by Canadians, consistent with much of the foregoing discussion. Further, measures to restrict future foreign acquisition of recreational real estate on a corporate or commercial basis would be necessary to avoid what might otherwise be a major loophole in respect of the Committee's determination on private recreational properties.

¹⁷See Legislative Assembly of Saskatchewan, *op. cit.*; and Jacob A. Brown, *A study of purchases and ownership of Saskatchewan farm lands by citizens and companies of the United States of America to December 31, 1970*, Saskatoon, June, 1972.

¹⁸Ontario Ministry of Agriculture and Food, *Corporate Farming and Vertical Integration in Ontario*, Toronto, October, 1972.

6.78 At the same time, the Committee notes that a great many standard tourist facilities, and specifically hotels, restaurants (especially chains), and service stations fall within the category of commercial tourist facilities. Further, it is widely known that many hotels, chain restaurants, and service stations are associated with foreign owned firms, although not always owned by them.

6.79 In addition, as was noted in connection with Background Considerations, tourism is important to the economy of Ontario, and to certain regions of the province in particular, inviting consideration of the appropriate role of foreign capital in tourism and the tourist industry development in Ontario.

6.80 As regards the presence of hotels, restaurants and service stations associated with foreign owned firms, the Committee understands that the advantages to be obtained from such connections are frequently obtained by way of franchise rather than ownership, or in the case of hotels by management contracts. These factors suggest that restrictions on land and real estate ownership would not necessarily restrict access into Ontario of foreign hotel, restaurant and service station chains and the benefits, advantages or convenience which they may provide.

6.81 With regard to the need for foreign capital in tourist developments in Ontario, the Committee notes that it was not presented with any evidence that foreign capital is or would be required for tourist development in Ontario. The Committee understands that the tourist industries are by and large relatively labour intensive, with few advanced technological requirements. For these reasons, and those outlined in the foregoing paragraphs, the Committee favours Canadian ownership and control of tourist development.*

Policy Alternatives

6.82 In its examination of commercial and corporate ownership of real estate in Ontario, the Committee identified four main policy approaches.

6.83 First, the Committee might recommend that no specific action be taken. Those who associate foreign capital and entrepreneurship with a pace and level of urban and other development which they find attractive, those who contend that foreign capital irrespective of its form is required, even desperately, for real estate development in Ontario, and those who conclude that foreign ownership and investment of the various aspects of the real estate industry is desirable, or at least not harmful, would support this approach, as would those to whom further government interference is felt to be unjustified or likely to be harmful.

6.84 In particular the desirability of measures related specifically to foreign investment or ownership, as opposed to policy techniques of general application, must be considered. For example, it might be maintained that a combination of land stockpiling, together with appropriate disposition policies; provincial measures to aid in the financing of services; a restructuring of municipal finance to obviate municipalities' incentives to maximize land values while minimizing expenditures for services; and measures to solve problems of construction and to introduce new techniques, would solve both the general problems of real estate and development in Ontario, and at the same time deal with problems which may arise from foreign investment or ownership in real estate.

6.85 The Committee is not satisfied that the present circumstances of foreign ownership and investment in Ontario are such as to require no action on the part of the Government of Ontario. Even with new measures to restructure real estate and land development markets in Ontario, measures with respect to foreign ownership and foreign investment appear to be desirable or required, even urgently. In any case, the Committee notes that the arguments advanced in support of no action are challengeable on the number of factual and policy grounds previously identified.

6.86 A second main policy alternative which the Committee has identified and considered is that of selective restrictions on foreign investment. For example, those types of investment which may be identified as the least beneficial or most pernicious in their effects on real estate

*Mr. Newman dissents from this conclusion. See p. 58.

markets and availability in Ontario, such as foreign acquisition of extensive tracts of predevelopment land, might be singled out for specific policy treatment. Quite apart from the selection those types of land or real estate acquisitions which ought to be restricted and those which ought not, the Committee does not believe that workable restrictions could be devised to effectively curtail foreign investments exclusively in specific areas, while leaving it unrestricted in other areas. In the judgment of the Committee, the interchangeability of uses of various types of land, the large number of ownership devices, the variety of investor motivations, the range of activities for which any given parcel of real estate may be commercially employed, and the powerful incentives for circumvention, strongly suggest the unworkability or unenforceability of partial restrictions with respect to foreign ownership or investment in land.

6.87 This latter determination led the Committee to consider carefully a third alternative, a land transactions screening process. This technique, for example, is already employed in limited form in Prince Edward Island, and in Switzerland and Sweden. However, only the P.E.I. policy appears designed to promote the general kinds of objectives which the Committee has in mind. In Switzerland, foreign investment and ownership of land is generally prohibited, although permission may be obtained to acquire land for industrial purposes. Similar provisions appear to obtain in Sweden, although access to industrial land, appears, on the basis of the Committee's enquiries, to be granted more routinely than in Switzerland.

6.88 The advantage which a screening process might offer would be that it could be used to segregate those real estate transactions meriting policy attention from those which did not. On the other hand, such a process would be administratively very complex, and in all probability exceedingly expensive to operate. Substantial professional resources would be required to research and reliably ascertain the various essential background aspects to transactions which might require specific screening. The Committee is satisfied that the complexity of determining ownership and control levels, investment purposes, and so on, would be very considerable. In addition the Committee understands that the uncertainties inherent in a screening process would make it exceedingly difficult for those who might be subject to screening to move with the expedition required of them in real estate markets and meeting of commitments in order to remain competitive. Restrictions designed to specifically screen acquisitions of land by foreign owned corporations would in effect place those corporations at a very significant business disadvantage vis-a-vis their Canadian counterparts in the same line of business. In the Committee's view, were this result desired, it should be achieved by either more direct or more equitable means.

6.89 These considerations led the committee to give serious consideration to a fourth alternative, across the board restrictions on acquisition of land or real estate by foreign owned corporations. The Committee recognized at the outset of its consideration of this matter, that recommendations of this general sort would constitute a significant departure in law and policy with respect to real estate in Ontario. At the same time the Committee takes the view that Canadian ownership, and particularly of land and real estate in the province is generally desired by the people of Ontario and is an appropriate general objective for the Government of the province.

6.90 In its consideration of the various aspects and issues of land ownership and land use by corporations in Ontario, the Committee has in all cases identified benefits which might accrue to Ontario from reserving future acquisitions of land in the province to Canadians and landed immigrants resident in Canada. In a number of areas, and specifically with respect to foreign acquisition of land for investment or speculative purposes, the Committee is persuaded that negative effects to the people of Ontario could be avoided or lessened by restrictions on foreign investment. As regards industrial land the Committee has concluded there is evidence that restrictions on land ownership would not be incompatible with foreign-owned corporations, continuing to operate, expand, or establish new facilities. The Committee is similarly satisfied that restrictions on land ownership would not be incompatible with foreign ownership of or investment in buildings, new or existing.

6.91 With respect to the real estate industries, the Committee appreciates that the effect of a prohibition on future acquisitions of real estate in Ontario, even in combination with transi-

tional measures, would in effect force foreign owned firms to either withdraw from commercial activities requiring or involving the ownership of land, or other real property or to be repatriated to Canadian ownership.

6.92 Forced repatriation of this kind has been employed only very infrequently in the history of Canadian law and policy. While the Committee does not take the position that the presence or absence of precedents is necessarily an argument for or against new policy, the Committee has examined the various reasons in support of and opposed to what would be a significant departure in policy direction in Ontario and in Canada.

6.93 In support of restrictive measures, the Committee has identified a number of factors in its previous discussion. There would appear to the Committee, *prima facie* and in the absence of other reasons, to be no need to perpetuate the growth of financial claims from outside Canada against real assets in Ontario. Where there are few technological, market access and other advantages associated with foreign ownership, the question arises whether there are sufficient reasons why the requisite services cannot or should not be provided under Canadian ownership and control. Further, and perhaps most importantly in respect of the real estate development and finance industries, the Committee is concerned that direct or speculative investment in real estate in the province may be having undesirable effects, and that it may well be difficult or impossible to separate the undesirable investment or speculative activities of foreign owned development or finance companies from their role in the provision of new facilities or finance.

6.94 Similarly, a number of arguments can be advanced in contradistinction. Many would argue that foreign owned firms, once established, should be entitled to carry on business and to earn returns for as long as they care to, unless there are very strong reasons for excluding them. From another standpoint, it might be contended that foreign owned firms provide a desired and desirable competitive element in the Canadian economy and in the specific sectors in question. In addition, the use of Canadian capital resources for buyback rather than new venture purposes would undoubtedly be questioned by some. It would be urged by some that there should be no commitment of resources to repatriation, or that such resources should be directed if at all to reacquiring only the most promising and/or strategic companies or industries to the Canadian economy.

Conclusion

6.95 *Having regard to all the factors, the Committee has concluded that it would be desirable for future acquisitions of land in Ontario to be restricted to corporations substantially owned in Canada.** As a general tenet, the Committee considers it desirable that land, the basic natural resource of the province, be owned within Canada rather than abroad. Concomitantly, the Committee notes the financial advantages associated with Canadian as opposed to foreign ownership.

6.96 In addition, the Committee is concerned about the undesirable impact on real estate and especially land markets, prices and development patterns which foreign investment is having or is likely to have in Ontario. The Committee has previously referred, for example, to the problematic effects of foreign investment in raw or pre-development land. Although the Committee is aware that some forms of foreign ownership of land in Ontario may have no harmful effects, the Committee has been concerned to recommend measures which are both consistent and workable.

6.97 At the same time, the Committee has concluded that foreign debt capital should continue to be permitted in connection with real estate activity in Ontario.

6.98 With respect to foreign corporate and commercial ownership of buildings, the Committee has concluded that there is insufficient evidence available for it to make a final determination. In the foregoing discussion, the Committee has noted many factors bearing on foreign ownership of land which also apply to all forms of real estate. In addition the Committee has identified a number of other matters of concern to the Committee and to the public. *In light of these considerations, the Committee has concluded that foreign ownership or investment in real estate*

*See p. 58 for dissenting opinions.

other than land in Ontario should be investigated further as a priority matter, with a specific view to assessing the desirability of extending its conclusions regarding land to all real property in the province.

Recommendations: Commercial and Corporate Real Estate Ownership

1. The Committee recommends, subject to recommendation 2, that all future acquisitions of land in Ontario other than by individuals be restricted to corporations or ventures not less than 75% owned by Canadian citizens, or landed immigrants resident in Canada.*
2. The Committee recommends that corporations or ventures less than 75% owned by Canadian citizens or resident landed immigrants who can establish that it is bona fide in the nature of their business to acquire land on a regular basis for real estate development or finance, have the option of becoming 75% owned by Canadian citizens or resident landed immigrants as a condition of being entitled to continue to acquire land during the period required to obtain a fair price for the corporations' shares on the Canadian market.
3. The Committee recommends that corporations or ventures less than 75% owned by Canadian citizens or resident landed immigrants be entitled to obtain leasehold interests in land in Ontario on terms appropriate to their commercial needs.
4. The Committee recommends that suitable procedures be devised, consistent with the Committee's overall recommendations and objectives, to assure that mortgagees irrespective of ownership are accorded suitable remedies on default of mortgage obligations.
- 5 The Committee recommends that foreign ownership of or investment in real estate other than land in Ontario should be investigated further as a priority matter, with a specific view to assessing the desirability of extending the Committee's recommendations regarding commercial and corporate ownership of land to all real property in the province. A study should include an examination of:
 - (a) the role of foreign investment in the behaviour and performance of markets for and development of real estate other than land in Ontario;
 - (b) the extent and nature of Ontario's requirements, if any, for foreign capital for real estate development;
 - (c) the other various aspects of foreign ownership of or investment in real property other than land identified in the foregoing discussion.

7. Public Land and Public Access

Public Land

7.1 Prior to 1971 the Government of Ontario through the then Department of Lands and Forests (now Ministry of Natural Resources) patented Crown Lands for cottage lot purposes to both Canadians and non-Canadians, resident in the province or not. In 1970 a study was undertaken by the Department of the patterns of prior disposition of Crown Lands, and of the desirability of a change in policy. Following the presentation of that report,¹⁹ government policy was changed to disposition of Crown Lands for cottage lots on a lease-only basis with a one year preference period for Canadians and landed immigrants.²⁰ As part of its general review of foreign ownership of land in Ontario, the Committee examined the administration and suitability of the present policy.

¹⁹Ontario Department of Lands and Forests, *A Report on the Disposition of Public Land for Cottage Purposes in Ontario, Other Canadian Provinces and Neighbouring States*, Toronto, January, 1971.

²⁰See the *Public Lands Act*, Revised Statutes of Ontario 1970, Chapter 380, as amended by Statutes of Ontario 1971, Chapter 46; and Ontario Regulation 246/71 as amended by Ontario Regulation 349/71.

*Messrs. Kennedy, Newman, Rowe and Walker dissent from this recommendation. See p. 58.

7.2 It is the Committee's understanding that Crown Land for cottage lots is made available according to two considerations: first, the availability of Crown land in various regions of the province; and second, the interest in leasing of Crown land for cottage lots as indicated by enquiries to the Ministry of Natural Resources and its regional offices.

7.3 The Committee has reviewed the disposition of leases since the coming into effect of the new policy, and has had the benefit of discussions with senior officials of the Ministry of Natural Resources. The precise impact of the one year preference period for Canadians is inconclusive on the basis of data available to date, but there are indications that it is operating to favour Canadian acquisition of leases although some non-Canadians continue to acquire Crown leases for cottage sites. A significant amount of land is, however, still available for lease and may become available to non-Canadians as the relevant 12-month periods expire.

7.4 The Committee is also aware that Crown land is patented or otherwise disposed of for other than private recreational use. Modest amounts of Crown lands have in recent years been made available for a variety of uses including agriculture, town-lots, commercial tourist facilities, and a variety of public works and other uses. So far as the Committee is aware, non-Canadians are not discriminated against in respect of these Crown lands where they are otherwise eligible.

7.5 As regards the leasing of Crown land for cottage lots, the Committee has considered whether or not there should be leases given to non-Canadians at all; whether or not the preference period for Canadians should be extended; and whether or not the present policy and practice with respect to the availability of Crown land for cottage lots should be reconsidered.

7.6 On the question of the amount of land made available, the Committee is of the view that the guiding consideration should not be the interest of prospective lessees as indicated by enquiries received by the Ministry. *Rather, the Committee would recommend that the amount of land made available and its distribution across various regions of the province, be more systematically geared to Canadian demand, having regard to the amount of Crown land available and the long term recreational needs of present and future generations in Ontario. Further, the Committee had concluded that Crown lands for cottage lots should be leased only to Canadian citizens and landed immigrants resident in Canada.*

7.7 As regards all other dispositions of Crown lands to non-Canadians, the Committee recommends that, as a minimum, the Ministry of Natural Resource's policies in these respects conform to the Committee's previous recommendations in respect of foreign ownership of land in the private sector. *Specifically, the Committee recommends that no Crown lands be patented to other than Canadian citizens or landed immigrants resident in Canada, or to corporations less than 75% owned by Canadian citizens or landed immigrants resident in Canada. The Committee recommends that other corporations be entitled to lease Crown land, where appropriate, and on appropriate terms and conditions.**

7.8 The Committee considered whether or not it should recommend that all future dispositions of Crown land be by leasehold only. The Committee concluded that it was not in a position to make detailed recommendations with respect to all the various types of disposition of Crown lands.

Public Access

7.9 A further matter which has been brought to the Committee's attention is concern about public access to recreational facilities in Ontario and specifically public access to beaches and waterfront. In a number of areas of the province there are apparent conflicts between present private ownership of waterfront property and public demand for the amenities which shore and water may provide. The Committee notes that public dissatisfaction may be particularly intensified by the private erection of fences or harassment of trespassers. The Committee further notes that dissatisfaction may be heightened where restrictive private owners are known to be non-Canadian.

*Mr. Newman dissents from this recommendation. See p. 58.

7.10 The Committee does not feel itself equipped to suggest detailed policy approaches to this problem at this time. *It does, however, note its urgency and in that context recommends that the government intensify its efforts to increase the availability and distribution of public recreational facilities and to devise long-term solutions to providing ready public access to the various kinds of amenities which Ontario's natural heritage affords.*

Forest and Mining Lands

7.11 Related to this is public concern about access to surface rights patented in connection with mining rights, and to land under licence for wood harvesting, which has been brought to the Committee's attention. The Committee notes that this is not strictly a problem of foreign ownership, although many of the corporations concerned are owned or controlled by non-Canadians. The Committee also notes that its foregoing recommendations with respect to industrial land, would apply to foreign ownership of forests and mining lands.

7.12 The nature of the concern about public access is that land is patented to mining companies in connection with mineral rights well in advance of or beyond the realistic needs of the respective companies for surface access or operations. Access to the land for recreation or other public uses may be denied. The Committee understands that this problem is under present review within the Ministry of Natural Resources in connection with possible revision of *The Mining Act*. *The Committee recommends that to the extent possible, and consistent with its previous determinations in regard to foreign ownership of land, the policy and practice in respect of surface rights in connection with mining be developed to accommodate a variety of uses simultaneously, including public access for recreation purposes.*

7.13 Similar problems are said to arise in respect of forest land under harvest. Clearly an additional consideration, however, is that of safety, because of the nature of logging activity. Further, access into forest lands is typically by way of roads constructed by logging companies. These are not necessarily designed for public use, heavy or otherwise. Additionally public vehicular traffic could interfere with logging operations.

7.14 *Again, in respect of forest lands, the Committee recommends that efforts be intensified toward developing appropriate multi-use solutions for these lands, consistent with the Committee's other recommendations on land ownership.*

Recommendations: Public Land and Public Access

1. The Committee recommends that the amount of Crown land made available for leasing for cottage lot purposes, and its distribution across various regions of the province, be more systematically geared to Canadian demand, having regard to the amount of Crown land available and the long-term recreational needs of present and future generations in Ontario.
2. The Committee recommends that Crown land for cottage lots be leased only to Canadian citizens, and landed immigrants resident in Canada.
3. The Committee recommends that no Crown lands be patented to other than Canadian citizens or landed immigrants resident in Canada, or to corporations or ventures less than 75% owned by Canadian citizens or landed immigrants resident in Canada. The Committee recommends that other corporations or ventures be entitled to lease Crown land, where appropriate, on appropriate terms and conditions.*
4. The Committee recommends that the Government intensify its efforts to increase the availability and distribution of public recreation facilities and to devise long-term solutions to providing ready public access to the various kinds of amenities which Ontario's natural heritage affords.

*Mr. Newman dissents from this recommendation. See p. 58.

5. The Committee recommends that to the extent possible, and consistent with its previous determinations in regard to foreign ownership of land, the policy and practice in respect of surface rights in connection with mining, be developed to accommodate a variety of uses simultaneously, including public access for recreation purposes.
6. In respect of forest lands, the Committee similarly recommends that efforts be intensified towards developing appropriate multiple use solutions for these lands, consistent with the Committee's other recommendations on land ownership.

8. Foreign Legations

8.1 Because the capital of Canada is located in Ontario, the province is host to the embassies and high commissions of many foreign countries. Consulates and other foreign government offices are located in other provincial centres. Under treaties and the conventions of international law, foreign legations are usually regarded as alien territory.

8.2 The Committee's observations on foreign ownership of land in Ontario should in no sense be construed to conflict with the desirability of foreign governments having suitable facilities for the proper conduct of their missions to Canada.

9. Information

9.1 The Committee has already identified the lack of comprehensive information on patterns of foreign ownership of land in Ontario. While the Committee has been presented with sufficient evidence for it to make determinations with respect to foreign ownership of land in a variety of areas, the Committee is convinced that further information and a continuing monitoring process would be desirable.

9.2 In its consultations abroad, it was pointed out to the Committee that, in general, Canadian data on foreign investment were generally more available and highly developed than in other countries. Nonetheless, in the course of its inquiry, the Committee has identified a number of areas where data is significantly lacking, in support of both information and analysis. The Committee has concluded that it would be desirable if the data deficiency in respect of ownership of land by individuals and corporations in the province were remedied.

Recommendation: Information

The Committee accordingly recommends that the Government prepare and publish on an annual basis, detailed ownership and residence data by region and by use, for land owned both by individuals and corporations in the province. The Committee further recommends that such data be developed in a manner which will generally support and facilitate the ongoing analysis of the behaviour and performance of real estate markets and institutions in Ontario.

C. CONSTITUTIONAL ISSUES

10. Constitutional Issues

10.1 The Committee is aware that the foregoing discussion and proposals raise a number of complex constitutional issues concerning the respective legislative powers of the federal and provincial jurisdictions. While many of the Committee's recommendations are unequivocally within the purview of provincial power, the Committee is informed that on a number of issues implicit in its recommendations there is doubt and dispute among legal scholars and practitioners. The Committee is advised, however, that substantial grounds exist in support of provincial legislative action along the lines the Committee has proposed.

10.2 Specifically, and in relation to the Committee's conclusions with respect to individual ownership of land, the Committee understands that the scope of the federal jurisdiction in relation to naturalization and aliens is in some doubt on the basis of jurisprudence to date, and particularly in its interface with exclusive provincial jurisdiction in respect of property and civil rights in the province and matters of a local and private nature.

The Committee recommends that the Government of Ontario take the position that legislation along the lines proposed by the Committee is unambiguously in relation to property and civil rights in the province and matters of a local and private nature.

10.3 As regards ownership of land by corporations, the Committee is advised that slightly different considerations may apply. A significant proportion of companies carrying on business in Ontario are incorporated in Ontario. The British North America Act gives to the provinces exclusive legislative jurisdiction in respect of incorporation of companies with provincial objects. Although the Committee understands that the operative effect of the words "companies with provincial objects" is not entirely clear in relation to the matters the Committee has considered, *the Committee recommends that the Government of Ontario take the position that Ontario's jurisdiction with respect to provincially incorporated companies, combined with provincial jurisdiction in relation to property, civil rights and matters of a local and private nature in the province, give Ontario clear constitutional authority to legislate in respect of Ontario companies along the lines the Committee has proposed.*

10.4 As regards federal companies, the Committee understands that provincial authority to control corporate ownership of land in connection with mortmain has been established on the highest judicial authority. Nonetheless, the Committee appreciates that the import of its recommendations as applied, for example, to a foreign owned federal company engaged in dealing in land, might be to effectively deny it ability to carry on that business in Ontario, or alternatively permit it to do so only if substantial changes in its ownership took place.

10.5 The Committee understands that provincial legislation—although, it may be emphasized, not along the substantive lines the Committee proposes—which would have denied a federal company the possibility of doing business in a province has been struck down by the Courts.

Beyond that, the Committee appreciates that provincial mandating of share ownership requirements for federal companies might be considered an attempted provincial legislative invasion of matters of an essentially company law nature and therefore subject to the federal jurisdiction in the case of federal companies.

10.6 The Committee understands, however, that alternative views might be propounded. The Committee has not been advised that the operative effect of the words "with provincial objects" in section 92 of the British North America Act could be interpreted to restrict certain types of business activity to companies incorporated in the province. The Committee is advised, however, that the considerations discussed in connection with individuals as to the ambit of the property and civil rights and matters of a local and private nature powers may apply with equivalent force and effect in respect of restrictions on land ownership by foreign owned companies who happen to be federally controlled. The Committee is further advised that the property and civil rights jurisdiction has been construed by the Courts to give the provinces exclusive legislative power in relation to the regulation of particular businesses and trades in the province.

10.7 The Committee has also been informed that it might be contended that some of the measures the Committee proposes are within federal jurisdiction in relation to trade and commerce. The Committee is doubtful that in relation to the powers enumerated in the British North America Act real property can appropriately be considered as an actual or potential object of either interprovincial or international trade, which consideration the Committee understands may be important to a determination of whether or not a matter is within the ambit of legislative jurisdiction in relation to trade and commerce. *As regards this ground as well, the Committee recommends the Government of Ontario take the position that legislation of the kind the Committee proposes is clearly within the scope of the provincial legislative powers we have identified.*

10.8 *With reference to companies incorporated in other provincial jurisdictions or in other countries, the Committee recommends that the Government of Ontario take the position that provincial jurisdiction is established along the lines already discussed.*

10.9 With respect to the Committee's other recommendations, it appears that grounds for provincial action are reasonably clear. The Committee's recommendations with respect to real property taxation could be appropriately founded on the province's powers in relation to direct taxation within the province and municipal institutions. The provinces' ownership and powers of management of public lands, and mineral and timber rights, are founded in several provisions of the British North America Act. Finally the Committee is advised that provincial authority exists in support of the Committee's recommendation with respect to information, as applied to both individuals and corporations and ventures, whether or not established pursuant to federal or provincial or foreign law.

10.10 Apart from constitutional questions—for which the final arbiters are the Courts—the Committee would emphasize that its recommendations are first and foremost for policy and for action. In the final analysis, the Committee would have its proposals construed as recommendations for implementation at the provincial or federal level or both, as appropriate.

Recommendation: Constitutional Issues

The Committee recommends that the Government of Ontario take the position that legislation of the kind the Committee has recommended with respect to real property in the province is within the powers of the province.

D. IMPLEMENTATION

11. Implementation

11.1 For reasons of equity and smooth transition, the Committee's recommendations have, with the exceptions noted,²¹ been directed to future transfers and transactions. The Committee is concerned that the prospects for legislation of the sort proposed by the Committee might prompt non-Canadian interests, and particularly the more speculatively inclined, to accelerate acquisition of land in Ontario. (Indeed, the president of the Urban Development Institute testified to a committee of the House of Commons²² that the mere uncertainty about the application of the proposed Foreign Investment Review Act to the kind of land acquisitions in which developers typically engage was accelerating foreign investment in real property in Ontario, in anticipation of restrictions.)

11.2 Such activities might result in capricious and unfortunate effects on real estate markets in Ontario, and would undermine the objectives the Committee's recommendations are directed to attaining for the people of Ontario and Canada.

Recommendation: Implementation

The Committee accordingly recommends review and implementation of its recommendations as a matter of urgency and priority, and that consideration be given to the early promulgation of a date on which the implementation of the Committee's recommendations would take effect.*†

²¹See Chapter 5, recommendation 5 and chapter 6, recommendation 2.

²²Minutes of Proceedings and Evidence of the Standing Committee on Finance, Trade and Economic Affairs, June 14, 1973.

*See p. 59 for "Additional Comments on Implementation" by Messrs. Handleman, Hodgson and Leluk.

†See also the note by Messrs. Kennedy, Newman, Rowe and Walker, p. 60.

E. SUMMARY OF RECOMMENDATIONS

Summary of Recommendations*

Ownership of Real Estate by Individuals

- 1. The Committee recommends, subject to recommendation 2, that all future transfers of legal or equitable (including leasehold) interests in real property in Ontario to individuals, directly or indirectly, be restricted to Canadian citizens and landed immigrants resident in Canada.**
- 2. The Committee recommends that individuals who are neither Canadian citizens nor resident landed immigrants be entitled to lease real property in Ontario for a maximum period of 1 year without option of renewal being included in the arrangement.**
- 3. The Committee recommends that persons who, subsequent to the implementation of recommendation 1, acquire real property in Ontario (other than by short-term lease) as landed immigrants resident in Canada, and who subsequently lose their resident landed immigrant status other than by becoming Canadian citizens, be required to dispose of property so acquired within three years of the effective date of their change in status.**
- 4. The Committee recommends that individuals otherwise ineligible to acquire real property in Ontario who are designated as beneficiaries of real property in Ontario under a will or intestacy be required to dispose of the property so acquired within three years.**
- 5. The Committee recommends that municipalities in Ontario be empowered to levy a surcharge of up to 50% of the real property tax otherwise applicable in respect of land owners in Ontario not ordinarily resident in Canada.**
- 6. The Committee recommends that the policy and practice with respect to real estate on which property tax obligations are in default be reviewed with particular attention to public advertisement, notification to adjoining owners, auctioning and tendering, and uniformity of procedure.*

Commercial and Corporate Real Estate Ownership

- 7. The Committee recommends, subject to recommendation 8, that all future acquisitions of land in Ontario other than by individuals be restricted to corporations or ventures not less than 75% owned by Canadian citizens, or landed immigrants resident in Canada.**
- 8. The Committee recommends that corporations less than 75% owned by Canadian citizens or resident landed immigrants, who can establish that it is bona fide in the nature of their business to acquire land on a regular basis for real estate development or finance, have the option of becoming 75% owned by Canadian citizens or resident landed immigrants as a condition of being entitled to continue to acquire land during the period required to obtain a fair price for the corporations' shares on the Canadian market.*
- 9. The Committee recommends that corporations or ventures less than 75% owned by Canadian citizens or resident landed immigrants be entitled to obtain leasehold interest in land in Ontario on terms appropriate to their commercial needs.*
- 10. The Committee recommends that suitable procedures be devised, consistent with the Committee's overall recommendations and objectives, to assure that mortgagees irrespective of ownership are accorded suitable remedies on default of mortgage obligations.*
- 11. The Committee recommends that foreign ownership of or investment in real estate other than land in Ontario should be investigated further as a priority matter, with a specific view to assessing the desirability of extending the Committee's recommendations regarding commercial and corporate ownership of land to all real property in the province. A study should include an examination of:*

*See pp. 57-60 for dissenting opinions and additional comments of individual members.

- (a) *the role of foreign investment in the behaviour and performance of markets for and development of real estate other than land in Ontario;*
- (b) *the extent and nature of Ontario's requirements, if any, for foreign capital for real estate development;*
- (c) *the other various aspects of foreign ownership of or investment in real property other than land identified in the foregoing discussion.*

Public Land and Public Access

- 12. *The Committee recommends that the amount of Crown land made available for leasing for cottage lot purposes, and its distribution across various regions of the province, be more systematically geared to Canadian demand, having regard to the amount of Crown land available and the long term recreational needs of present and future generations in Ontario.*
- 13. *The Committee recommends that Crown land for cottage lots be leased only to Canadian citizens, and landed immigrants resident in Canada.*
- 14. *The Committee recommends that no Crown lands be patented to other than Canadian citizens or landed immigrants resident in Canada, or to corporations or ventures less than 75% owned by Canadian citizens or landed immigrants resident in Canada. The Committee recommends that other corporations or ventures be entitled to lease Crown land, where appropriate, on appropriate terms and conditions.**
- 15. *The Committee recommends that the Government intensify its efforts to increase the availability and distribution of public recreation facilities and to devise long term solutions to providing ready public access to the various kinds of amenities which Ontario's natural heritage affords.*
- 16. *The Committee recommends that to the extent possible, and consistent with its previous determinations in regard to foreign ownership of land, the policy and practice in respect of surface rights in connection with mining be developed to accommodate a variety of uses simultaneously, including public access for recreation purposes.*
- 17. *In respect of forest lands, the Committee similarly recommends that efforts be intensified towards developing appropriate multiple use solutions for these lands, consistent with the Committee's other recommendations on land ownership.*

Information

- 18. *The Committee recommends that the Government prepare and publish, on an annual basis, detailed ownership and residence data by region and by use, for land owned both by individuals and corporations in the province. The Committee further recommends that such data be developed in a manner which will generally support and facilitate the ongoing analysis of the behaviour and performance of real estate markets and institutions in Ontario.*

Constitutional Issues

- 19. *The Committee recommends that the Government of Ontario take the position that legislation of the kind the Committee has recommended with respect to real property in the province is within the powers of the province.*

Implementation

- 20. *The Committee recommends review and implementation of its recommendations as a matter of urgency and priority, and that consideration be given to the early promulgation of a date on which the implementation of the Committee's recommendations would take effect.**

*See pp. 57-60 for dissenting opinions and additional comments of individual members.

**F. DISSENTING OPINIONS AND ADDITIONAL
COMMENTS**

Dissenting opinion of Messrs. Kennedy and Walker re Paragraph 5.25 and Recommendation No. 2, pp. 23 and 53

To prohibit individuals from leasing beyond a year is unnecessary and also would create problems of various magnitudes for both owner and tenant—e.g. repair and maintenance arrangements. Many cottages are rented by verbal arrangements. The main desire is to retain Ontario land in Canadian ownership and recommendation No. 1 provides for this.

Dissenting opinion of Messrs. Kennedy and Rowe re Paragraph 5.35 and Recommendation No. 4, pp. 23 and 53

In our view, it is not serious if ownership upon inheritance continues in non-Canadian hands until marketed in normal fashion, when it would pass to eligible purchasers. This recommendation could create unnecessary ill-will for rather insignificant reasons.

Dissenting opinion of Messrs. Kennedy, Newman, Rowe and Walker re Paragraph 5.46 and Recommendation No. 5, pp. 24 and 53

In our view, it would be improper to levy a surcharge of the sort proposed on non-resident taxpayers. Non-resident land owners are in effect tourists who, when visiting Canada, do contribute to the general revenues of all three levels of government, including retail sales taxes, gasoline taxes, and federal excise and other taxes, and of course applicable local property and other taxes. A surcharge which would fall on non-Canadians who own vacation land in this country would be discriminatory.

Dissenting opinion of Mr. Newman re Chapter 5

I have considered carefully the Committee's discussion and conclusion concerning foreign ownership of land by individuals. While I agree with a number of the factors identified by my colleagues as of public concern in this connection, and while I concur in many of the Committee's other determinations, such as those respecting Crown Land, I feel that the Committee's recommendations in this chapter are both inappropriate and unfair.

The Committee's recommendation that no future transfers of land to individuals be to other than Canadian citizens or landed immigrants resident in Canada would substantially impair the long standing rights of individuals to reasonable freedom to dispose of or acquire real property. I do not feel that rights of private ownership extend to justify land speculation as by acquisitions of large tracts of land or extensive shoreline, discussed in chapter 6. The fact that rights of ownership may have been modified by zoning and other land use controls is in my view not a reason for further narrowing or infringing on existing rights of private ownership of land and other real property.

I also recognize public concern that Canadians may not have had a fair opportunity to bid on cottages and other properties owned by non-Canadians. To accommodate these considerations while preserving basic rights of ownership, I would favour a mandatory preference period for Canadian purchasers. I would accordingly recommend, subject to a modification in respect of heirs, that in respect of all future transfers of land to individuals there be a one year preference period for Canadian citizens and landed immigrants.

The Committee's recommendations would also operate to prevent non-Canadians from passing on their property in Ontario to their children or other heirs. This would in my view be most unfair, and particularly with respect to the numerous Americans who have been seasonal residents of Ontario across many generations. Unless their designated heirs happen to be Canadian citizens or landed immigrants resident in Canada, the recommendations of my colleagues would operate to prevent descendants of present land owners from succeeding to title of their cottages and other real properties in Ontario. A more reasonable and more equitable approach, in my opinion, would be to permit land owners who are neither Canadian citizens nor resident landed immigrants to pass on their real property holdings in Ontario on their deaths to their parents, grandparents, brothers, and sisters and the direct descendants thereof, and I would so recommend.

I also feel that the conclusion of the majority of my colleagues with respect to the taxation of non-resident land owners is discriminatory and unfair, and may invite retaliation. I have accordingly concurred in the dissenting opinion of Messrs. Kennedy, Rowe and Walker with respect to this recommendation.

Dissenting opinion of Messrs. Kennedy, Rowe and Walker re Chapter 6

It is our opinion that we do not have sufficient information about foreign investment in land for industrial or commercial purposes to justify our coming to a conclusion at this time. The text of the Report identifies a number of concerns and indicates questions which should be explored in detail before making a final determination. We note that the Committee have not been able to satisfy themselves that they have sufficient information to justify a conclusion about foreign investment in real estate other than land, and have accordingly recommended further study. (Recommendation No. 5, p. 38; Summary of Recommendations, No. 11, p. 53). We note also that Messrs. Handleman, Hodgson and Leluk state that they "are not fully informed as to the long range economic ramifications of the recommendations, particularly as they apply to the commercial and industrial use of land," and therefore recommend that the Government satisfy itself on that point before implementing the recommendations contained in the Report. (See "Additional Comments on Implementation," p. 59). Seven members of the Committee, including ourselves, are thus not satisfied that there has been sufficient study to justify immediate implementation of recommendation No. 1 on p. 38. (Summary of Recommendations, No. 7, p. 53). We therefore recommend that further study along the lines recommended in recommendation No. 5, p. 38 (Summary of Recommendations, No. 11, p. 53), but to cover land as well as other real estate, be given high priority. The appropriate form of the study should be determined by the Government, but should in any event be in the nature of a public enquiry.

Dissenting opinion of Mr. Newman re Chapter 6

The Committee's recommendations with respect to corporate and commercial ownership of land in my view go too far and would have detrimental effects on the economy and economic development of the province.

I share the concern of the Committee and others about the undesirable effects of foreign speculative investment in and acquisition of real estate in Ontario, particularly in and near urban areas. I do not agree, however, that the Committee's sweeping restrictions on foreign ownership are the appropriate technique to deal with this problem. In my view, a selective system of controls which would also serve to preserve the interests of present landowners in securing an appropriate realization of their equity would be more appropriate and equitable.

I am particularly concerned about the impact of the Committee's recommendations on industrial and business activity in the province. In my view, foreign-owned companies, and the jobs, technology, taxes and so on that they bring with them should continue to be welcome in the province, and they should be entitled to acquire the land on which their premises may be located and to any capital appreciation in their real estate holdings.

I am especially concerned about the prospective impact of the Committee's recommendations on potential European investors. Expert witnesses who have appeared before the Committee emphasized the strong European preference, psychological or otherwise, for ownership of land. Because European investors, particularly those from the Common Market, are likely to be of much greater relative importance to the Canadian and Ontario economies in the future, I have concluded that it would be unwise to impose measures which would operate to cut back the flow of new investment into Ontario with consequent negative effects on employment and other benefits. In my view, any legitimate concern carrying on business in Ontario should be entitled to acquire and own land for its reasonable needs, and I so recommend. I stress that by "carrying on business" I do not intend to include mere speculative or investment acquisitions.

With respect to commercial recreational and tourist facilities, I note that there are presently many tourist or hunting and tourist lodges owned and operated in Ontario by non-Canadians. I recommend that, to assure an appropriate level of entrepreneurship, particularly in northern tourist development, non-Canadians not be excluded from this industry although I would favour a one year purchase preference period for Canadians.

Comment by Mr. Martel on Section 6.19

I believe that restrictions on foreign ownership of *real estate* would have little or no effect on industrial activity or overall demand for *real estate* for industrial use.

Additional Comments on Implementation (Chapter 11; Recommendation No. 20) by Messrs. Handleman, Hodgson and Leluk

On the basis of information available to us, both from the evidence given before the Committee and from the research conducted by the Committee staff, we support the comments and recommendations contained in this report.

In our view, a nation is firmly rooted in its history, its people and its primacy over the land which it occupies. Ownership of Canadian soil by our citizens and those who have committed themselves to this country by immigrating to it can only strengthen the nation. Perception by the young of the Legislature's resolve to retain ownership for them of their natural heritage will impress on them the fact that government is for them and their future as well as for the here and now.

Having come to the above conclusion on personal and philosophical grounds, we readily admit that the nature and breadth of the Committee's inquiries was limited by time, money and depth of staff. We do not wish to minimize the dedication, skill and sheer hard work which the staff has devoted to the studies carried out on behalf of the Committee. It is a fact, however, that we are not fully informed as to the long range economic ramifications of the recommendations, particularly as they apply to the commercial and industrial use of land. Nor can it be said with any confidence that the Committee has complete data as to the complex international money market or the manner in which our recommendations may affect this very delicate system.

We are, therefore, in a dilemma. While accepting the report and its recommendations, we are concerned that their *immediate* implementation by the Government could have unanticipated implications at some time in the indefinite future. It would be irresponsible on our part to satisfy our personal and philosophical leanings by urging early implementation of the recommendations without knowing the long range economic price which may have to be paid by the people of Ontario. It may very well be that, once known, the price will be low in relation to the benefits. If the Government can satisfy itself on that point, then there is, in our opinion, no other reason to delay the implementation of all recommendations.

Note by Messrs. Kennedy, Newman, Rowe and Walker re Chapter 11, "Implementation", (Summary of Recommendations, No. 20).

Our approval of this recommendation is subject to our several dissenting opinions.

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